The University of the State of New York

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

No. 19-111

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 to a student with a disability by the New York City Department of Education

Appearances:
Law Office of Erika L. Hartley, Esq., attorney for petitioner, by Erika L. Hartley, Esq.

Howard Friedman, Esq., Special Assistant Corporation Counsel, attorneys for respondent, by Chrystal O'Connor, 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 a decision of an impartial hearing officer (IHO) which, among other things, did not render determinations sought by the parent and instead directed the district (respondent) to determine the student's instructional language. 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]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

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

III. Facts and Procedural History

A full recitation of the student's educational history is unnecessary due to the disposition of this appeal on procedural grounds. Briefly, the student has a diagnosis of autism spectrum disorder (Parent Exs. K at p.8; M at p. 2; P at p. 3). During the 2016-17 school year, he began attending preschool in the district with related services of speech-language therapy, occupational therapy (OT) and physical therapy (PT) (Parent Exs. K at 1-2; M at p. 2). For the 2017-18 school year (kindergarten), the student attended a 12:1+1 special class in a community school and continued to receive related services of speech-language therapy, OT and PT (Dist. Ex. 2 at p. 1-2). The district retained the student to repeat kindergarten for the 2018-19 school year (Parent's Exs. K at p. 1; M at p. 1) On May 31, 2018, the Committee on Special Education (CSE) convened to develop a program for the student's 2018-19 school year (Dist. Ex. 3 at p. 34). The CSE

continued to find the student eligible for special education as a student with autism (id. at p. 30), and recommended that he attend a 12:1+1 special class in a community school with related services of one 30-minute session of small group counseling service per week, two 30-minute sessions per week of individual OT, one 30-minute session per week of PT in a small group, four 30-minute sessions per week of individual speech-language therapy and parent counseling and training twice a year in a group (id. at p. 26).

A. Due Process Complaint Notice

In a due process complaint notice dated January 8, 2019, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2017-18 and 2018-19 school years (see Dist. Ex. 1 at 1-2). The parent contended that each of the IEP developed during the school year at issue did not provide meaningful educational benefits for the student or offer him the opportunity to make academic, social and emotional gains (id.). The parent claimed that the IEPs lacked appropriate goals and benchmarks and recommended inappropriate programs for the student (id. at 2). The parent also asserted that the IEPs were developed without appropriate data and prevented the student form making progress (id.).

The parent also contended that a district placement is inappropriate for the student because he required a specialized nonpublic school with a multisensory approach to instruction, research-based methodologies to address his unique needs and appropriate functional grouping. (Dist. Ex. 1 at p.2). As relief, the parent sought a determination finding that the district denied the student a FAPE for the 2017-18 and 2018-19 school years, a deferment to the Central Based Support Team to seek a nonpublic school placement for the student and tutoring at an "enhanced rate" to remedy the denial of FAPE for the two school years at issue (id. at 2).

B. Impartial Hearing Officer Decision

After a prehearing conference on March 11, 2019, the parties proceeded to an impartial hearing on June 19, 2019, which concluded on August 1, 2019, after three days of proceedings (see Tr. pp. 1-283). After the final date of the hearing, the parent requested the opportunity to submit a tape recording of an IEP meeting as additional evidence to demonstrate that she had not prevented the district from providing a FAPE to the student (id. at 7). After the IHO scheduled a new hearing date to accommodate the parent's request to proffer additional evidence, the district informed the IHO that it was withdrawing "the equities argument concerning the 2018-19 school year."(id.).[1] The parties instead proceeded to submit closing briefs without the submission of any further proof (id.).

In a decision dated September 22, 2019, the IHO noted that "the parent plays a significant role" in the development of a student's IEP and "[t]herefore, notices must be sent in a language that she understands" (IHO Decision at pp. 14-15). The IHO found that although the parent claimed to be a monolingual Arabic speaker, the district failed to send notices in Arabic and "translation services were spotty at best" (id. at p. 15). The IHO noted that the director of tutoring services who testified on behalf of the parent stated that the parent spoke to her in English without

[1] The IHO noted that "[t]he DOE does not dispute the denial of FAPE but, claims it came about due to the parents [sic] inequitable and uncooperative behaviors" (IHO Decision at p. 8).

the assistance of a translator (id.). The IHO opined that "[w]hile I believe the parent is more comfortable with Arabic, she obviously speaks more English that she professes" (id.). The IHO further noted that Arabic was the "first language" spoken in the student's home (id.). The IHO found that neither party had submitted evidence to determine the student's language for instructional purposes (id.). The IHO noted that the district has procedures in place to determine the student's instructional language which "must be determined to ensure that compensatory services help the child advance" (id.). The IHO ordered the district to conduct a language screening by issuing a Home Language Questionnaire and, if a language other than English is spoken by the student, a language proficiency team must determine if the student has secondary language acquisition needs or if his disability is a determinative factor (id. at 15-16). The IHO noted that if the student did not have second language needs he would be deemed English proficient (id.) The IHO also directed that the school principal must review the team's decision and the school superintendent must review the principal's decision (id.).

As relief, the IHO awarded the student 500 hours of compensatory tutoring services to be provided by EBL Coaching "[o]nce the language of instruction is determined" by a language proficiency team, the principal and superintendent (id.). The IHO directed that if the student was designated bilingual, a teacher with a bilingual certification or a certified teacher of English for students of other languages must provide instruction to the student (id.). The IHO ordered the district to compensate EBL Coaching at an "enhanced rate" not to exceed $125 per hour (id.).

IV. Appeal for State-Level Review

The parent appeals. The parent argues that the IHO erred by failing to make factual determinations regarding the FAPE violations alleged in the due process complaint notice for the 2017-18 and 2018-19 school years, and that it was improper for the IHO "to merely state that the [district] did not contest FAPE."[2] The parent also contends that certain factual determinations made by the IHO are inconsistent with the hearing record and should be annulled. Specifically, the parent asserts that the IHO improperly determined that the parent understood English and Arabic was the "first language" spoken in the home. The parent also asserts that the IHO erred by ordering a language team to determine the language of instruction for the student. The parent argues that there was no issue raised with respect to the appropriate instructional language for the student; rather, the only issue raised with respect to language had to do with the parent's receipt of notices and communications in English although her primary language is Arabic. The parent also contends that the compensatory tutoring services awarded to the student by the IHO should not be delayed pending the language team's determination of the student's instructional language because the student "is in critical need of remediation." As relief the parent seeks: (a) a determination that FAPE was violated for the school years at issue and the IEPs for those years were inappropriate; (b) a determination that a nonpublic school should be considered for the student; (c) the annulment of any factual findings identified by the parent as lacking support in the hearing record; (d) reversal of the IHO's order directing that the district conduct a language survey and determine the

[2] The parent refers to the FAPE denials as having occurred during the 2018-19 and 2019-20 years. Apparently, this is in error as the 2019-20 school year was never at issue in this matter.

appropriate instructional language for the student; and (e) an order that the compensatory tutoring services be provided to the student without delay.

In an answer, the district responds to the parent's allegations and generally argues to uphold the IHO's decision in its entirety. The district also asserts that the parent's appeal is untimely and should be dismissed because it was served more than forty days after the date of the IHO's decision.

V. Discussion

A. Timeliness of Appeal

An appeal from an IHO's decision to an SRO must be initiated by timely personal service of a verified request for review and other supporting documents upon a respondent (8 NYCRR 279.4[a]). A request for review must be personally served within 40 days after the date of the IHO's decision to be reviewed (id.). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11[b]). State regulation provides an SRO with the authority to dismiss sua sponte an untimely request for review (8 NYCRR 279.13; see e.g., Application of the Board of Educ., Appeal No. 17-100 [dismissing a district's appeal for failure to timely effectuate personal service on the parent]; Application of a Student with a Disability, Appeal No. 16-014 [dismissing a parent's appeal for failure to effectuate service in a timely manner]). However, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the 40-day timeline for good cause shown (8 NYCRR 279.13). The reasons for the failure must be set forth in the request for review (id.). "Good cause for late filing would be something like postal service error, or, in other words, an event that the filing party had no control over" (Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *5 [N.D.N.Y. Dec. 19, 2006]; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012]).

The parent failed to initiate the appeal in accordance with the timelines prescribed in Part 279 of the State regulations. The IHO's decision was dated September 22, 2019 (IHO Decision at p. 29). The parent was, therefore, required to personally serve the request for review upon the district no later than November 1, 2019, 40 days from the date of the IHO decision (see 8 NYCRR 279.4). However, the parent's affidavit of service indicates that the parent served the district by personal service on November 8, 2019 (Parent Aff. of Service), which renders the request for review untimely.

Additionally, the parent has failed to assert good cause—or any reason whatsoever—in her request for review for the failure to timely initiate the appeal from the IHO's decision. Instead, the parent asserts that the IHO's decision was received by the parent's attorney on October 2, 2019, and the request for review is timely because it was "made within forty days of the receipt of the decision of the IHO" (Request for Review at p. 1). However, the time period for appealing an IHO decision begins to run based upon the date of the IHO's decision and State regulations regarding timeliness do not rely upon the date of a party's receipt of an IHO decision—or the date the IHO transmitted the decision by e-mail—for purposes of calculating the timelines for serving a petition (see 8 NYCRR 279.4[a]; Mt. Vernon City Sch. Dist. v. R.N., 2019 WL 169380 [Sup. Ct.

Westchester Cnty. Jan. 9, 2019] [upholding the dismissal of an SRO appeal as untimely, as calculation of the 40-day time period runs from the date of an IHO decision not from date of receipt via email or regular mail]; Application of a Student with a Disability, Appeal No. 19-043; Application of a Student with a Disability, Appeal No. 16-029; Application of a Student with a Disability, Appeal No. 10-081; Application of a Student with a Disability, Appeal No. 10-034; Application of a Student with a Disability, Appeal No. 08-043; Application of a Child with a Disability, Appeal No. 04-004;). Therefore, the actual date that the IHO's decision is transmitted to the parties or the actual date upon which either of the parties receives the IHO's decision is not relevant to the calculus in determining whether a request for review is timely. Accordingly, there is no basis on which to excuse the parent's failure to timely appeal the IHO's decision (see 8 NYCRR 279.13). Thus, the district's assertion that the appeal was untimely served is correct.

Because the parent failed to properly initiate this appeal by effectuating timely service upon the district, and there is no cause, let alone good cause, asserted in the request for review as to why late service of a request for review should be excused, in an exercise of my discretion, the appeal is dismissed (8 NYCRR 279.13; see New York City Dep't of Educ. v. S.H., 2014 WL 572583, at *5-*7 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late]; B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-67 [S.D.N.Y. 2013]; T.W., 891 F. Supp. 2d at 440-41; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *4-*5 [Sept. 25, 2009] [upholding dismissal of a petition served three days late]; Keramaty v. Arlington Cent. Sch. Dist., 05-CV-0006, at *39-*41 [S.D.N.Y. Jan. 25, 2006] [upholding dismissal of a petition served one day late], adopted [S.D.N.Y. Feb. 28, 2006]; Application of a Student with a Disability, Appeal No. 18-046 [dismissing request for review for being served one day late]).

B. Compliance with Practice Regulations

Although the parent's request for review is subject to dismissal due to untimeliness, I would be remiss in the particular circumstances of this matter if I did not also discuss the additional grounds for rejection of the request for review, namely the parent's attorney's repeated and, at this juncture, presumably willful disregard of the regulations that govern practice before the Office of State Review.

Each request for review filed with the Office of State Review must contain a "Notice of Request for Review," the content of which is set forth in State regulation and generally notifies a responding party of the requirements with respect to preparing, serving, and filing an answer to the request for review (8 NYCRR 279.3).

State regulation further 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]). Section 279.8 of the State regulations requires, in relevant part, that a request for review shall 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][1]-[3]). The regulation further states that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][4]).

In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the dismissal of a petition by an SRO (8 NYCRR 279.8[a]; 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]). In applying my discretion to issues of non-compliance with the practice regulations, I am mindful that "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], quoting Foman v. Davis, 371 U.S. 178 [1962]). However, while a singular failure to comply with the practice requirements of Part 279 may not warrant an SRO exercising his or her discretion to dismiss a request for review (8 NYCRR 279.8[a]; 279.13; see Application of a Student with a Disability, Appeal No. 16-040), an SRO may be more inclined to do so after a party's repeated failure to comply with the practice requirements (see Application of a Student with a Disability, Appeal No. 18-010; Application of a Student with a Disability, Appeal No. 17-101; Application of a Student with a Disability, Appeal No. 16-060; see also Application of a Student with a Disability, Appeal No. 17-015; Application of a Student with a Disability, Appeal No. 16-040). This is particularly so when the individual responsible for the noncompliance appears to be unwilling to rectify the problem and conform with the practice requirements.

In the matter at hand, the parent's initial filing dated November 7, 2019, which consisted of a "Notice of Intention to Seek Review," a "Notice of Petition" and a pleading denominated as a "Verified Petition" does not comply with the current form requirements of Part 279 of the practice regulations. Indeed, the regulations governing practice before the Office of State Review (OSR) were amended over three years ago (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) to, among other things, align with federal terminology and change the name of the pleading to initiate a review from "petition" to "request for review" (8 NYCRR 279.4[a]; see 34 CFR 300.515[b]). In addition, the parent served a notice of intention to seek review upon the district, but the notice of intention to seek review was not accompanied by a case information statement as required by State regulation, nor does it contain the language explicitly required by State regulation (8 NYCRR 279.2[a], [e]). Further, the notice of request for review accompanying the parent's pleading (incorrectly denominated as a "Notice of Petition") also does not comply with 8 NYCRR 279.3, but instead contains the incorrect language from the old notice requirements under State regulation in effect prior to January 1, 2017, including a statement of the wrong time frame for responding to the parent's pleading.

The parent's filing in this case was shoddy. Within the various captions on the papers filed by the parent, the Notice of Intention to Seek Review identifies "S.M. o/b/o J.T." as the petitioner, the Notice of Petition identifies "R.H. o/b/o M.E." as the petitioner and the Verified Petition identifies yet a third set of identifying initials as the petitioner and the student. Both the Notice of Petition and the Verified Petition use the IHO case number "181728" while the Notice of Intention to Seek Review uses the IHO case number "172973." Examination of the due process complaint notice and IHO decision received from the district in this matter suggests that the correct petitioner for the case caption is the third set of initials used by the parent's attorney and that the accurate IHO case number is "181728." Moreover, similar to a problematic pleading filed in Application of a Student with a Disability, Appeal 19-097,[3] the request for review drafted by the parent's attorney simply numbers every statement of fact instead of following the requirement for "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" (8 NYCRR 279.4[c][2], [4] [emphasis added]; see also 8 NYCRR 279.4[a], [f]). While the parent appears to put the issues in boldface type in this case, which is very helpful, I also note that the challenged determinations of the IHO states as follows "**THE IHO ERRED IN FAILING TO DETERMINE FAPE WAS DENIED IN THE 2018-2019 AND 2019-2020 SCHOOL YEARS, THAT THE IEPS WERE INAPPROPRIATE AND A DEFERMENT HAVE BEEN CONSIDERED,"** which is slipshod insofar as the 2019-20 school year was not at issue in the underlying impartial hearing. If the school year problem merely occurred in one instance, and the pleading was otherwise clear because it referenced the correct school year elsewhere, it might be more easily overlooked; however, the parent's "petition" does not otherwise clearly reference the student's IEP for the 2017-18 school year that was challenged in the parent's due process complaint notice, thus leaving only the 2018-19 school year.

The problem in this case is this is not the first time. The parent's attorney has previously been cautioned regarding her noncompliance with current practice regulations on several occasions. In Application of a Student with a Disability, Appeal 18-131 at p. 6, n.4, the SRO in that proceeding urged plaintiff's attorney, "as a counsel . . . who appears regularly in this forum" to review Part 279, as amended and effective January 1, 2017, and to conform her practice to the regulations currently in effect. The SRO also noted that counsel "ha[d] previously been alerted to this particular nonconformance in pleadings submitted on her clients' behalf, among others (Application of a Student with a Disability, Appeal No. 18-079; see Application of a Student with a Disability, Appeal No. 18-055)" and was cautioned that "repeated failures to comply with the practice requirements" could result in an SRO's exercise of his or her discretion to dismiss a request for review. Despite having received several warnings, the level of compliance with the practice regulations of Part 279 is declining rather than improving.

[3] The parent simply numbered the Burlington/Carter elements in that pleading, instead of clearly identifying and numbering the specific issues in dispute such as errors by an IHO. An "issue" in an appeal of an IHO decision would be a distinct ruling regarding the required element of special education planning or service delivery, such as lacking the required personnel at a CSE meeting, or the inaccuracy of an evaluation of the student, the poor description of needs in an IEP, the adequacy of annual goals in an IEP, the appropriateness of the type of educational setting called for in an IEP, the adequacy or lack of a related service, LRE, the implementation of IEP services, or that a unilateral placement lacked sufficient specially designed instruction etc., each of which have unique, specific rules in statute, regulation and/or interpretive case law.

Accordingly, assuming that the parent's request for review had been timely, I would have been constrained to reject the parent's papers due to the deficiencies described above and possibly find certain claims abandoned (8 NYCRR 279.8[a], [c][4]). Given the strong policy considerations which favor a determination of matters on the merits wherever possible, I would most likely have provided the parent with an opportunity to correct these oversights by granting her leave to serve and file a notice of intention to seek review, a case information statement, a notice of request for review and a request for review that met the form requirements of Part 279 (and to identify the petitioner and IHO case number correctly on all filings).

However, I now issue strong caution to the parent's counsel that, as a matter of fairness to all litigants and to preserve the integrity and efficiency of the IDEA's due process system in this State, repeated excusal of practice regulation violations without prejudice is not tenable indefinitely. Thus in order to avoid the possibility of consequences of increasing severity, counsel for the parent is urged to carefully review and comply with the current requirements of Part 279 of State regulations, and examine the requests for review and model forms that have been published as guidance by the Office of State Review (see https://www.sro.nysed.gov/book/prepare-appeal).

VI. Conclusion

As the appeal was not timely filed and good cause for accepting a late request for review was not proffered, the necessary inquiry is at an end.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
December 12, 2019

JUSTYN P. BATES
STATE REVIEW OFFICER