The University of the State of New York

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

No. 20-188

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 New York City Department of Education

Appearances:
The Cuddy Law Firm, PLLC, attorneys for petitioner, by Anthoula Vasiliou, Esq.

Judy Nathan, Interim Acting General Counsel, attorneys for respondent, by Gail Eckstein, 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 did not order all of the relief sought by the parent to remedy respondent's (the district's) failure to provide her son with an appropriate educational program for the 2017-18, 2018-19, and 2019-20 school years. The appeal must be sustained in part.

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

The student has received special education and related services from the district since preschool (see Parent Ex. P at pp. 1-2).

On March 31, 2017, during the student's 2016-17 school year (eighth grade), a CSE convened and developed an IEP with an implementation date of April 25, 2017 (see Parent Ex. B at pp. 1, 9, 13). Finding the student eligible for special education as a student with an emotional disturbance, the CSE recommended a 12-month school year program consisting of a 12:1+1 special class in a specialized school with a 1:1 paraprofessional, along with counseling and parent counseling and training (id. at pp. 1, 9-10, 13). On June 28, 2017, the district developed a behavior intervention plan (BIP) (Parent Ex. G).

In summer 2017, the parent obtained private evaluations of the student (see Parent Exs. H-I). Reportedly, the student's "behavioral and emotional difficulties significantly worsened once he entered high school" (Parent Ex. P at p. 2). The student transferred from one district public school to another during the 2017-18 school year (ninth grade) (see Parent Exs. C at p. 2; P at p. 2). A CSE convened on January 16, 2018 and developed an IEP with an implementation date of January 3, 2018 (see Parent Ex. C at pp. 1, 13). The January 2018 CSE changed the student's eligibility classification to autism and recommended a 12-month school year program in a 12:1+1 special class in State-approved nonpublic school along with a 1:1 paraprofessional, counseling, and parent counseling and training (id. at pp. 1, 2, 9-10). In addition, the CSE indicated that it would convene in March 2018 "to make a new recommendation" for a State-approved nonpublic school (id. at pp. 2, 3).

For the 2018-19 school year (ninth grade repeated), the student attended a State-approved nonpublic school (NPS); however, at a CSE meeting held on January 15, 2019, it was reported that the student "rarely [went] into the classrooms and spen[t] time sitting in the main office of the school" (Parent Ex. D at pp. 1, 2). The January 2019 CSE recommended a 12-month school year program in a 6:1+1 special classes for academics and a 12:1+1 special class for electives at a State-approved nonpublic school, along with the support of a 1:1 paraprofessional, and counseling and parent counseling and training services (id. at pp. 7-8, 12).[1] The NPS conducted a functional behavior analysis (FBA) and, in May 2019, developed a BIP for the student (Parent Exs. J; K). By the end of the 2018-19 school year, the student had not achieved any of his annual goals (Parent Ex. L).

In April and June, 2019, the district conducted an educational evaluation of the student as part of a "requested reevaluation for a change in school" (Parent Ex. M at p. 1). On July 16, 2019, a CSE convened and developed an IEP for the student for the 2019-20 school year (tenth grade) (Parent Ex. F at pp. 1, 17; see Parent Ex. P at p. 1). The July 2019 CSE found the student remained eligible for special education and related services as a student with autism (Parent Ex. F at pp. 1, 17). The July 2019 CSE continued the recommendations for a 12-month school year program consisting of a 6:1+1 special class for academics and a 12:1+1 special class for electives in a State-approved nonpublic day school (id. at pp. 12-13, 17). The July 2019 CSE also recommended two 30-minute sessions per week of individual counseling and one 30-minute session per month of parent counseling and training in a small group (id. at p. 12). For supplementary aids and services, the July 2019 CSE recommended individual, full-time behavior support paraprofessional, and individual, full-time transportation paraprofessional services (id.). The student continued to attend the NPS for the 2019-20 school year (see Parent Exs. F at p. 1; N).

In a letter to the district, dated August 12, 2019, the parent stated her disagreement with the district's "2019 evaluations" of the student as insufficiently comprehensive and requested that the district fund independent educational evaluations (IEEs), including a speech-language evaluation, a neuropsychological evaluation, an applied behavior analysis (ABA) skills assessment, and an FBA and BIP from particular agencies as specified rates (Parent Ex. R).

[1] On March 14, 2019, the CSE convened and added a 1:1 transportation paraprofessional to the student's program (compare Parent Ex. E at p. 8, with Parent Ex. D at p. 8).

A. Due Process Complaint Notice

In a November 22, 2019 due process complaint notice, the parent alleged that the district had denied the student a free appropriate public education (FAPE) for the 2017-18, 2018-19, and 2019-20 school years (Parent Ex. A at p. 1). For the 2017-18 school year, the parent asserted that the student was not properly classified as a student with autism and that the district failed to respond to her request for the student to be evaluated (id. at pp. 2, 6). The parent contended that the district recommended an inappropriate program in an inappropriate setting for the 2017-18 school year (id. at pp. 2-3). For the 2018-19 school year, the parent alleged that the NPS the student attended had failed to address his needs and that the district failed to conduct a comprehensive triennial evaluation during this time (id. at pp. 3, 4).

The parent also alleged that the CSEs failed to develop appropriate present levels of educational performance or appropriate, meaningful, and measurable annual goals for the student on each of the IEPs created during the 2017-18 and 2018-19 school years (Parent Ex. A at p. 5). Next, the parent asserted that the district failed to address the student's behavioral needs and had not conducted an FBA since 2016 despite the student's ongoing and well-documented difficulties with transitioning, failing to follow school rules, refusing to complete classwork, and elopement (id. at p. 6). The parent further asserted that the district failed to implement the student's July 2019 IEP, failed to provide an appropriate placement, failed to recommend appropriate related services, failed to develop an appropriate transition plan, and failed to provide parent counseling and training (id. at pp. 6-7). Finally, the parent asserted that the district failed to respond to her request for IEEs (id. at pp. 4, 5).

As relief, the parent requested IEEs consisting of a neuropsychological evaluation, an ABA skills assessment to be completed by a Board Certified Behavior Analyst (BCBA), an FBA, a BIP, and a speech-language evaluation (Parent Ex. A at p. 8). The parent also requested that each of the IEEs be conducted by her chosen provider (id.). The parent further requested that the CSE be directed to convene within 15 days of the completion of the IEEs to develop an appropriate IEP and to find an appropriate public school placement within 15 days of the IHO's order (id.). If the district failed to do so, the parent requested that the student's placement be deferred to the central based support team (CBST) to locate an appropriate nonpublic school (id.). If the CBST failed to locate an approved placement within 30 days, the parent requested that the district fund the tuition of a non-approved nonpublic school (id.). The parent also requested specialized transportation with a 1:1, door-to-door paraprofessional (id.). The parent further requested compensatory educational services in the areas of ABA, speech-language therapy, counseling, and academic tutoring, as well as compensatory parent counseling and training (id.).

B. Impartial Hearing Officer Decision

The parties convened for an impartial hearing on April 8, 2020 (Tr. pp. 1-13). Initially, IHO De Leon noted that the district was not calling any witnesses or submitting any documentary evidence in support of its statutory obligation and, on that basis, he would find a three-year denial of a FAPE to the student (Tr. pp. 4, 6). The IHO further stated that a three-year denial of a FAPE would constitute a "gross violation" of the IDEA (Tr. p. 4). The district stated on the record that it agreed to some of the parent's requested relief, specifically consideration of a deferral to the CBST, 125 hours of speech-language therapy, 300 hours of academic tutoring, and 50 hours of

parent counseling and training (Tr. pp. 7-8). The district did not agree to the parent's request for enhanced rates and offered related service authorizations (RSAs) for the student's related services and a "P-3" voucher for the student's academic tutoring (Tr. p. 8).

In a decision dated November 2, 2020, IHO De Leon noted that, "[a]fter having adjournments granted at the request of and with the consent of the parties, or for good cause, the impartial hearing was held on April 8, 2020" (IHO Decision at p. 5). The IHO stated that the parent submitted a written closing statement on April 17, 2020, and the district did not submit a closing statement and did not object to the parent's closing statement (id.). The IHO next described the parent's requested relief set forth during the impartial hearing and noted that the parent had submitted evidence in multiple "PDF" files (id. at p. 6). The IHO indicated that the parent had been directed to resubmit all exhibits as a single PDF submission and had failed to do so (id. at pp. 6-7). As a result, the IHO stated that the parent's exhibits S, T, U, V, and W were not received in evidence (id. at pp. 7, 8, 9).

Having found that the district failed to meet its burden to prove that it provided the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years, the IHO De Leon ordered the district to reimburse the parent or directly pay for the cost of a neuropsychological evaluation at a rate not to exceed $4,000, an ABA skills assessment conducted by a BCBA at a rate not to exceed $3,375, an FBA at a rate not to exceed $3,375, a BIP if recommended by the FBA at a rate not to exceed $1,125, and a speech-language evaluation at a rate not to exceed $1,800 (IHO Decision at pp. 12-13). As compensatory education services, the IHO awarded 125 hours of speech-language therapy, 300 hours of academic tutoring, and 50 hours of parent counseling and training, each to be provided at a rate not to exceed the reasonable and fair market rate (id. at p. 13). The IHO further ordered the district to conduct evaluations in all areas of the student's suspected disability not indicated above that had not been conducted within the last two years (id.). The IHO also ordered the CSE to reconvene and develop an IEP after considering all available evaluations and related information, and to consider deferring the student's placement to the CBST to locate a State-approved nonpublic school for the 2020-21 school year (id.). Finally, the IHO determined that the hearing record did not support the parent's request for relief related to special transportation (id. at p. 12).

IV. Appeal for State-Level Review

The parent appeals and argues that IHO De Leon erred by failing to accept the parent's exhibits and affidavits into evidence. Next the parent asserts that IHO De Leon failed to comply with the due process timelines, unilaterally extended the compliance date, and inaccurately represented that such extensions were requested by and consented to by the parties. As a result, the parent contends that IHO De Leon unilaterally delayed the hearing and delayed issuance of his final decision, which caused the student to remain in an inappropriate placement unnecessarily. The parent offers a proposed exhibit with attachments as additional evidence consisting of an attorney affidavit and email correspondence, which documents the parent's requests to schedule the hearing, attempts to transmit evidence, and submission of a written closing statement.[2] The

[2] Generally, documentary evidence not presented at an impartial hearing may be considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability,

parent alleges that the IHO erred by denying the parent's request for special transportation and that the IHO failed to consider the additional compensatory education requested in the parent's closing statement.

As relief, the parent requests a finding that IHO De Leon's conduct was not appropriate relative to procedural errors committed by the IHO, a reversal of the IHO's findings related to other relief sought by the parent, an award of additional compensatory educational services consisting of 264 hours of psychotherapy, 100 hours of psychiatric services, individualized private transportation with a 1:1 paraprofessional to and from school, an assistive technology evaluation to be conducted by the district, and an occupational therapy (OT) evaluation to be conducted by the district. In the event that the district cannot conduct the evaluations within 30 days of the decision of the SRO, the parent requests that the evaluations be conducted by her chosen provider at rates not to exceed $2,500 for the assistive technology evaluation and $2,000 for the OT evaluation. Lastly, the parent requests a specific finding that the IHO's conduct deprived the student of a FAPE and, as a remedy, requests an additional award of 36 hours of speech-language therapy, 24 hours of parent counseling and training, 240 hours of tutoring, and 48 hours of psychotherapy.

In an answer, the district responds to the parent's claims with admissions and denials and asserts that the IHO's award of direct and compensatory relief was sufficient to remedy its failure to provide the student with a FAPE for the 2017-18, 2018-19, and 2019-20 school years. The district contends that the sole matter on appeal is the alleged procedural errors committed by IHO De Leon. The district does not cross-appeal any of the relief ordered by the IHO and further agrees to provide the student with individualized private transportation with a 1:1 paraprofessional to and from school, fund an assistive technology evaluation, and fund an OT evaluation. The district opposes the additional compensatory educational services the parent seeks as compensation for the delays allegedly caused by the IHO and argues that the student was not prejudiced.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and

---

Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; see also 8 NYCRR 279.10[b]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]). The parent has submitted an attorney affidavit with six attachments as proposed SRO Exhibit A for consideration as additional documentary evidence. In addition to exhibits and the transcript of proceedings, State regulation also specifically requires that, "any response to the [due process] complaint," "all briefs, arguments or written requests for an order filed by the parties for consideration by the [IHO]," as well as "all written orders, rulings or decisions issued in the case including an order granting or denying a party's request for an order" are part of the hearing record (8 NYCRR 200.5[j][5][vi][a], [b], [c], [e]-[f]). The six attachments to the attorney affidavit are email correspondence between the parties and the IHO and do not represent additional evidence presented for the first time on appeal (Req. for Rev. Attachments A-F). Included in the email correspondence are requests to schedule the impartial hearing, the IHO's rules for electronic disclosure, and the parties' attempts at compliance with those rules, which should have been included in the hearing record (id.). Accordingly, these documents have been considered in reviewing the parent's claims on appeal.

independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. __, 137 S. Ct. 988, 999 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 137 S. Ct. at 1001). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations

omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Endrew F., 137 S. Ct. at 1001 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).[3]

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

VI. Discussion

A. Conduct of the Impartial Hearing and Timeliness of the IHO's Decision

The parent alleges that IHO De Leon failed to timely schedule and unilaterally delayed the impartial hearing. The parent also asserts that despite having complied with the IHO's directive related to submitting electronic files, the IHO did not receive into evidence and did not consider the parent's properly disclosed exhibits, which contained witnesses' direct testimony by affidavit in lieu of in-hearing testimony. The parent further contends that the IHO failed to notify the parent that the affidavits were not received after the completion of the impartial hearing.

When a parent files a due process complaint notice, the impartial hearing or prehearing conference must commence within 14 days of the IHO receiving the parties' written waiver of the resolution meeting, or the parties' written notice that mediation or a resolution meeting failed to result in agreement, or the expiration of the 30-day resolution period; unless the parties agree in writing to continue mediation at the end of the resolution period (8 NYCRR 200.5[j][3][iii][b][1]-[4]). An IHO is required to render a decision not later than 45 days after the expiration of the resolution period (34 CFR 300.510[b], [c]; 300.515[a]; 8 NYCRR 200.5[j][5]), unless an extension has been granted at the request of either party (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5][i]).

[3] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

Extensions may be granted consistent within regulatory constraints, the IHO must ensure that the hearing record includes documentation setting forth the reason for each extension, and each extension "shall be for no more than 30 days" (8 NYCRR 200.5[j][5][i]).[4] Absent a compelling reason or a specific showing of substantial hardship, "a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, avoidable witness scheduling conflicts or other similar reasons" (8 NYCRR 200.5[j][5][iii]). Moreover, an IHO "shall not rely on the agreement of the parties as a basis for granting an extension" (id.). If an IHO has granted an extension to the regulatory timelines, State regulation requires that the IHO issue a decision within 14 days of the date the IHO closes the hearing record (8 NYCRR 200.5[j][5]). Pursuant to State regulation, an IHO shall determine when the record is closed and notify the parties of the date the record is closed (8 NYCRR 200.5[j][5][v]).

Here, the parent filed a due process complaint notice on November 22, 2019 (Parent Ex. A).[5] The parent provided written notice to the IHO that the resolution meeting failed to result in agreement via email correspondence dated December 13, 2019, requesting that the impartial hearing be scheduled (Req. for Rev. Attachment A at pp. 2-3). In an email dated January 31, 2020, the parent "follow[ed] up" on the earlier request to schedule the impartial hearing (id. at p. 2). In an email dated February 12, 2020, the IHO's office responded stating that the earliest available date for the impartial hearing was April 8, 2020, to which the parties agreed and the IHO confirmed (id. at p. 1). The hearing record indicates that three extensions to the timelines were granted related to the time before the start of the hearing. According to the IHO's orders of extension, extensions were requested by "[b]oth [p]arties" on February 5, 2020, March 6, 2020, and April 5, 2020 were for "[a]vailability of [w]itness(es)." These three orders were electronically signed by the IHO on April 25, 2020, after the impartial hearing was held on April 8, 2020. The hearing record does not include documentation of the parties' purported extension requests.

The parties convened for a one-day impartial hearing on April 8, 2020 (Tr. pp. 1-13). The district did not call any witnesses or submit any documentary evidence and agreed to several of the parent's requests for relief; the IHO determined that the district had failed to meet its burden of proof (Tr. pp. 4, 6-8). The parties requested an extension of the compliance date for the parent to submit her closing statement (Tr. pp. 10-11). The parent's closing brief was submitted and received by the IHO on April 17, 2020 (Req. for Rev. Attachment D at p. 1; see Parent Ex. X; IHO Decision at p. 5).

After the impartial hearing concluded, the hearing record reflects that IHO De Leon granted four extensions to the timelines purportedly requested on May 5, 2020, June 4, 2020, July 4, 2020, and August 3, 2020. According to the IHO's orders of extension, extensions were requested by "[b]oth [p]arties."[6] The May 5, 2020 order of extension was for "[a]vailability of [w]itness(es)," the June

[4] However, State regulation does allow for extensions beyond 30 days but for no more than 60 days during the time that schools are closed pursuant to an Executive order issued by the Governor pursuant to a State of emergency for the COVID-19 crisis (8 NYCRR 200.5[j][5][i]).

[5] IHO De Leon was appointed on November 27, 2019 (Tr. p. 3; IHO Decision at p. 5).

[6] The order granting the extension purportedly requested by the parties on May 5, 2020, was electronically signed

4, 2020 order of extension was for "[p]ost [h]earing [b]riefs," and the July 4, 2020 and August 3, 2020 orders of extension were for the purpose of "other" and "[d]ecision." Except for the extension requested at the April 8, 2020 hearing date (see Tr. pp. 10-11), the hearing record does not include documentation of the parties' purported extension requests. Moreover, at the April 8, 2020 impartial hearing, the IHO had made a finding that the district denied the student a FAPE for three years based on its failure to present evidence, no witnesses were called, and the parent had committed to and did, in fact, provide a closing statement by April 17, 2020 (Tr. pp. 4, 6, 10-11; Req. for Rev. Attachment D at p. 1; see IHO Decision at p. 5). Thus, the reasons stated for the extensions appear to be unrelated to the actual circumstances of this matter. Further, the IHO did not indicate on the orders whether he considered the cumulative impact of the factors set forth in State regulation (i.e., effect on student's "educational interest or well-being," the parties' opportunity to present their cases, "any adverse financial or other detrimental consequences" to a party, and any delay in the proceeding thus far) (8 NCYRR 200.5[j][5][ii]).

Indeed, it is unclear from the hearing record why the IHO granted any extensions after the parent submitted the post-hearing brief. While an IHO determines when the record is closed, guidance from the State Education Department's Office of Special Education explains that "[a] record is closed when all post-hearing submissions are received by the IHO" and that "[o]nce a record is closed, there may be no further extensions to the hearing timelines. . . . [and] the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record" ("Requirements Related to Special Education Impartial Hearings," at p. 5, Office of Special Educ. [Sept. 2017], available at http://www.p12.nysed.gov/specialed/publications/2017-memos/documents/requirements-impartial-hearings-september-2017.pdf; see 8 NYCRR 200.5[j][5][iii]). Here, while the parent submitted the post-hearing brief on April 17, 2020, the IHO set the record close date as October 26, 2020, over six months later, and issued his decision on November 2, 2020 (IHO Decision at pp. 1, 13).

Based on the foregoing, the extensions granted by IHO De Leon were highly irregular and inconsistent with State regulation, and, as a result, the hearing record supports a finding that the IHO's decision was not rendered within the applicable timelines. Nevertheless, courts have found that as long as the student's substantive right to a FAPE is not compromised because of the late decision, an untimely administrative decision, by itself, does not deny the student a FAPE (Jusino v. New York City Dep't of Educ., 2016 WL 9649880, at *6 [E.D.N.Y. Aug. 8, 2016] ["Case law's emphasis on substantial vindication of substantive rights and ensuring a fair opportunity to participate is equally present in resolving disputes arising out of the decision deadline date. With respect to the 45-day deadline, 'relief is warranted only if. . . [a] forty-five-day rule violation affected [the student's] right to a free appropriate public education'"] [alterations in the original], quoting J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 69 [2d Cir. 2000]; see A.M. v. N.Y.C. Dep't of Educ., 840 F. Supp. 2d 660, 689 n.15 [E.D.N.Y. 2012] [same], aff'd, 513 Fed. App'x 95 [2d Cir. Mar. 12, 2013]). According to the courts, the substance of an administrative decision is not flawed just because it is issued late (J.C. v. New York City Dep't of Educ., 2015 WL 1499389, at *14 n.12 [S.D.N.Y. Mar. 31, 2015] [noting that "[t]he untimeliness of the SRO's decision does not suggest a flaw in its logic and reasoning"], aff'd, 643 Fed. App'x 31 [2d Cir. Mar. 16, 2016]; M.L. v. New York City Dept. of Educ., 2014 WL 1301957, at *13 [S.D.N.Y. Mar. 31, 2014] ["Although the

by the IHO on May 4, 2020.

Court agrees with Plaintiffs that the State Review Office's routine delays in issuing decisions is problematic, it has found no authority in IDEA cases that allows it to declare the SRO's decision a nullity"]).

Based on the foregoing authority, IHO De Leon's failure to comply with the timelines does not warrant overturning the IHO's findings and, further, review of the hearing record does not support the parent's request for relief related to the delay. The parent alleges that the student remained in an inappropriate placement as a result of "the severely delayed time that the IHO took to issue his decision" and, therefore, seeks additional compensatory education for a period of six months (Req. for Rev. ¶ 27). However, the IHO awarded compensatory education to remedy a denial of a FAPE for the 2019-20 school year, which overlapped with a period of the alleged delay in the IHO decision from April through June 2020 (see IHO Decision at p. 13). There is no basis for a finding that additional compensatory education is warranted as a result of the IHO's delayed decision during the same period of time. While the IHO's award of IEEs and orders requiring the district to evaluate the student and to convene the CSE and defer the student's placement to the CBST may have affected the student's programming for the 2020-21 school year, here, the district did not object to these aspects of the parent's request for relief (see Tr. p. 7), the evidence in the hearing record reflects that neuropsychological and speech-language IEEs were conducted in March 2020 (see Parent Exs. O-P) and, according to the district, the CSE convened on June 4, 2020 to develop an IEP for the student for the 2020-21 school year (Answer ¶15 n.3). Thus, there is no basis for a finding that the student was deprived of any services as a result of the timing of the IHO's decision and, if the parent disagrees with the recommendations of the June 2020 CSE, she may obtain appropriate relief by challenging the IEP in a separate proceeding (see Eley v. Dist. of Columbia, 2012 WL 3656471, at *11 [D.D.C. Aug. 24, 2012] [noting that prospective placement is not an appropriate remedy until the IEP for the school year for which such placement is sought has been developed and the parent challenges that IEP]). Based on the foregoing, the hearing record does not support a finding that this is an instance where the delay in the IHO decision compromised the student's substantive right to a FAPE and no further relief is warranted related to the timing of the IHO's decision. Nevertheless, IHO De Leon is reminded that a student may be prejudiced by delays in decision issuance and that he must comply with the applicable State regulations for granting extensions and rendering a decision in a timely manner.

Regarding the parent's assertion that the IHO improperly failed to receive evidence electronically submitted after the impartial hearing, unless specifically prohibited by regulations, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, with how they conduct an impartial hearing, in order that they may "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46704 [Aug. 14, 2006]). At the same time, the IHO is expected to ensure that the impartial hearing operates as an effective method for resolving disputes between the parents and district (id.). State and federal regulations balance the interests of having a complete hearing record with the parties having sufficient opportunity to prepare their respective cases and review evidence.

During the impartial hearing, the IHO acknowledged that the parent had disclosed documentary evidence and direct testimony by affidavit to the district and that the district received the parent's disclosure and did not object to the content or wish to cross-examine any of the five

affiants (Tr. p. 6).[7] The IHO then stated "[s]o those affidavits would come in as the uncontroverted direct testimony of those witnesses" (id.). Before closing the hearing, the IHO directed the parent's counsel to summarize his documentary and testimonial evidence in a written closing statement and reminded him to "resubmit the exhibits in one PDF with the exhibit list as the first page" copied to the IHO, the case manager, and the district representative (Tr. pp. 10, 11). The IHO then directed the district representative to acknowledge receipt of the parent's submission and indicate that the district did not object to the content of the affidavits and did not wish to cross-examine the parent's witnesses (Tr. p. 11). Upon completion of those tasks, the IHO stated "then I will receive all those documents in evidence at that time and indicate so" (id.).

Although the IHO stated in his decision that parent exhibits S through W were "not ultimately received in evidence," he also wrote in his decision that his final order was based on the parent's requested relief and "uncontroverted testamentary and documentary submissions" (IHO Decision at pp. 7, 9). The IHO cited to the parent's closing brief and included all of the parent's exhibits on the list of exhibits annexed to his decision (id. at pp. 3-4, 5, 10). Further, the district filed a certified copy of the hearing record with the Office of State Review, which included all of the parent's exhibits. Thus, even if the IHO declined to consider some of the parent's exhibits due to the format or manner in which the parent submitted them during the impartial hearing, they ultimately were made part of the hearing record, and I have conducted an impartial and independent review of the entire hearing record, including all of the exhibits the parent asserts were not received in evidence (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]).

B. Relief

Neither party has appealed the IHO's determinations that the district failed to offer the student a FAPE for the 2017-18, 2018-19, and 2019-20 school years (see IHO Decision at p. 12). Additionally, the parties do not appeal the IHO's order directing the district to fund a neuropsychological evaluation, an ABA skills assessment to be conducted by a BCBA, an FBA, a BIP, a speech-language evaluation, 125 hours of speech-language therapy, 300 hours of academic tutoring, and 50 hours of parent counseling and training (IHO Decision at pp. 12-13). The parties also do not appeal the IHO's order requiring the district to evaluate the student in all areas of suspected disability that have not been evaluated over the last two years. Therefore, the IHO's determinations on these issues have become final and binding on both parties and they will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). In addition, the district has stated in its answer that it does not oppose the parent's request for individualized private transportation with a 1:1 paraprofessional to and from school, funding for an assistive technology evaluation, and funding for an OT evaluation (Answer ¶ 3). The district further avers that the June 4, 2020 CSE recommended special transportation with a paraprofessional for the student for the 2020-21 school year (Answer ¶ 15 n.3). As the parties are in agreement, I will modify the IHO's decision to encompass these aspects of the parent's requested relief.

[7] State regulation provides that "[t]he [IHO] may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross examination" (8 NYCRR 200.5[j][3][xii][f]).

The remaining claims before me are the parent's request for 264 hours of compensatory psychotherapy services and 100 hours of compensatory psychiatric services unaddressed by the IHO. The district contends that the IHO's award was sufficient to compensate the student for a three-year denial of a FAPE.

Compensatory education is an equitable remedy that is tailored to meet the unique circumstances of each case (Wenger v. Canastota, 979 F. Supp. 147 [N.D.N.Y. 1997]). Compensatory education relief may be awarded to a student with a disability who remains eligible for instruction under the IDEA (see 20 U.S.C. §§ 1401[3], 1412[a][1][B]; Educ. Law §§ 3202[1], 4401[1], 4402[5]). The purpose of an award of compensatory education is to provide an appropriate remedy for a denial of a FAPE (see E.M. v. New York City Dep't of Educ., 758 F.3d 442, 451 [2d Cir. 2014]; Newington, 546 F.3d at 123 [stating that "[t]he IDEA allows a hearing officer to fashion an appropriate remedy, and . . . compensatory education is an available option under the Act to make up for denial of a [FAPE]"]; see also E. Lyme, 790 F.3d at 456; Reid v. Dist. of Columbia, 401 F.3d 516, 524 [D.C. Cir. 2005] [holding that, in fashioning an appropriate compensatory education remedy, "the inquiry must be fact-specific, and to accomplish IDEA's purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place"]; Parents of Student W. v. Puyallup Sch. Dist., 31 F.3d 1489, 1497 [9th Cir. 1994]). Likewise, SROs have awarded compensatory services to students who remain eligible to attend school and have been denied appropriate services, if such deprivation of instruction could be remedied through the provision of additional services before the student becomes ineligible for instruction by reason of age or graduation (Bd. of Educ. of City Sch. Dist. of Buffalo v. Munoz, 16 A.D.3d 1142 [4th Dep't 2005] [finding it proper for an SRO to order a school district to provide "make-up services" to a student upon the school district's failure to provide those educational services to the student during home instruction]). Accordingly, an award of compensatory education should aim to place the student in the position he or she would have been in had the district complied with its obligations under the IDEA (see Newington, 546 F.3d at 123 [holding that compensatory education awards should be designed so as to "appropriately address[] the problems with the IEP"]; see also Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1289 [11th Cir. 2008] [holding that "[c]ompensatory awards should place children in the position they would have been in but for the violation of the Act"]; Bd. of Educ. of Fayette County v. L.M., 478 F.3d 307, 316 [6th Cir. 2007] [holding that "a flexible approach, rather than a rote hour-by-hour compensation award, is more likely to address [the student's] educational problems successfully"]; Reid, 401 F.3d at 518 [holding that compensatory education is a "replacement of educational services the child should have received in the first place" and that compensatory education awards "should aim to place disabled children in the same position they would have occupied but for the school district's violations of IDEA"]).

According to the parent's closing brief, in anticipation of an award of IEEs at the impartial hearing, the parent obtained a private neuropsychological evaluation that was completed on March 13, 2020 (Parent Ex. P; see Parent Ex. X at p. 4). The private neuropsychologist attributed much of the student's current need for compensatory education to the district having recommended inappropriate placements with inadequate support for the student beginning in preschool (Parent Ex. P at p. 14). The private neuropsychologist reported that the student exhibited signs of a developmental and psychiatric disorder in early childhood demonstrating difficulties with attention, social relatedness, and speech-language in preschool (id.). According to the private

neuropsychologist, the student was inappropriately placed in a general education classroom without services (id.). The private neuropsychologist opined that the district's inappropriate placement contributed to an emergence of more severe psychiatric difficulties that manifested as behaviors such as assaulting teachers, peer conflicts, refusing to remain in the classroom and school building, eloping from the bus, and expressing bizarre ideation (id. at pp. 14-19). According to the private neuropsychologist, the student's "highly inconsistent functioning preclude[d] a diagnosis of an [i]ntellectual [d]isability" (id. at p. 16). The interaction of the student's diagnoses of autism spectrum disorder, attention deficit hyperactivity disorder, and his psychiatric difficulties "significantly limit[ed]" his ability to function to his potential (id.). According to the neuropsychologist, "[g]iven this complex diagnostic picture, [the student] need[ed] a very high degree of academic clinical and social supports" (id.).

In his recommendations, the private neuropsychologist stated that the student's "academic progress and emotional state ha[d] been impaired by an inappropriate educational placement and inadequate support services" (Parent Ex. P at p. 19). The private neuropsychologist recommended individual psychotherapy twice per week from a licensed mental health professional outside of school as compensation "for an inadequate level of support services being given to [the student]" (id. at p. 22). According to the private neuropsychologist, therapy should address the student's anxiety, mood, and problems with self-regulation (id.). The private neuropsychologist further explained that cognitive behavioral therapy could assist the student with understanding and accepting the information contained within the neuropsychological evaluation report, as well as with examining his thoughts, attitudes, beliefs, and patterns of behavior that lead to anxiety and avoidant, oppositional, and aggressive behavior (id.). The private neuropsychologist recommended that the student's psychotherapist regularly consult with the student's psychiatrist to assess the presence of other psychiatric disorders (id.).

The parent requested the compensatory psychotherapy services in her closing brief along with the other recommendations of the independent and private evaluators (Parent Ex. X at p. 12), and it is unclear whether or not IHO De Leon considered the request as, in his final decision, he did not discuss the request or explicitly deny it (see IHO Decision). Here, the neuropsychological evaluation articulates a rationale for the recommendation for the services (Parent Ex. P at p. 22), and the district has not rebutted the neuropsychologist's recommendation or otherwise argued that the services would not serve to place the student in the place he would have been but for the district's denial of a FAPE. Overall, the hearing record supports an award of 264 hours of compensatory psychotherapy services in addition to the compensatory education services ordered by the IHO, and, therefore, the district will be ordered to fund such services to remedy its failure to provide the student a FAPE for three school years.

With regard to the parent's request for 100 hours of psychiatric services, the hearing record reflects that the parent requested that the district fund such services until the student could be placed in a day-treatment program (Parent Ex. X at pp. 7, 13). The specific recommendation from the independent neuropsychologist was for weekly monitoring of the student's "medication regimen" noting that the student "continued to present with clinical levels of anxiety, mood disturbance, disruptive sleep, oppositional behavior and aggressive outbursts despite the medicine currently being prescribed" (Parent Exs. P at p. 23; T at p. 4). Unlike the parent's request for psychotherapy services, the parent's request for psychiatric services was more akin to a request that the student's program prospectively include the service, rather than a request that for

compensatory education to remedy a past wrong.[8] Awarding prospective placement or services for a student, under certain circumstances, has the effect of circumventing the statutory process, pursuant to which the CSE is tasked with reviewing information about the student's progress under current educational programming and periodically assessing the student's needs (see Adams v. Dist. of Columbia, 285 F. Supp. 3d 381, 393, 396-97 [D.D.C. 2018] [noting with approval the hearing officer's finding "that the directives of IDEA would be best effectuated by ordering an IEP review and revision, rather than prospective placement in a private school"]; see also Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *16 [E.D.N.Y. Oct. 30, 2008] [noting that "services found to be appropriate for a student during one school year are not necessarily appropriate for the student during a subsequent school year"]). As noted above, according to the district, the CSE convened in June 2020 and developed an IEP for the student for the 2020-21 school year and there is no evidence in the hearing record regarding the CSE's recommendations, including whether the CSE considered psychiatric services or a day treatment program, and it would be inappropriate to circumvent the CSE's role in determining the student's needs in this respect based on new evaluative information for the 2020-21 school year. However, if the CSE has not already done so, I encourage the district, when it next convenes, to consider the parent's request for a therapeutic day treatment program for the student. As noted above, if the parent disagrees with the CSE's recommendations for the student for the 2020-21 school year, she may challenge the IEP in a separate proceeding.

As a final note regarding the requested psychiatric services, even if the parent requested them as compensatory education instead of as part of a prospective program for the student, the district is not required to fund, as compensatory education, services that are in excess of a FAPE (L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). A district is required to provide related services as may be required to assist the student to benefit from education, including "medical services . . . for diagnostic and evaluation purposes" as well as school health services (20 U.S.C. § 1401[26]; 34 CFR 300.34[a]; see 8 NYCRR 200.1[ee], [qq]). As addressed by the United States Supreme Court, medical services provided by a physician are excluded unless they are for diagnostic or evaluation purposes (Irving Ind. Sch. Dist. V. Tatro, 468 U.S. 883 [1984]).[9] Considering the above, the parent has not presented a reasoned argument that the costs of the requested psychiatric services for monitoring the student's medication regimen should have been borne by the district as a part of FAPE and, therefore, relief in the form of compensatory psychiatric services are not warranted.

[8] Demonstrating this distinction, the neuropsychologist prefaced other recommendations by describing them in relation to the past failures of the district (i.e., "[t]o compensate for the lack of appropriate education and support services" or "[t]o address the inadequate level of support services") and by specifically identifying them as "compensatory services" (Parent Ex. T at p. 4). In contrast, the recommendation for psychiatric consultation was phrased as a recommendation for the student's program on a going-forward (interim) basis (id.).

[9] With respect to management of a student's medication regimen, a child who is medically fragile and needs school health services or school nurse services to receive a FAPE must be provided such services as indicated in the student's IEP (see School Health Services and School Nurse Services, 71 Fed. Reg. 46,574 [Aug. 14, 2006]; see also 34 CFR 300.34[a], [c][13]; 8 NYCRR 200.1[qq], [ss]; Cedar Rapids Community Sch. Dist. v. Garret, 526 U.S. 66, 79 [1999] [finding that school districts must fund related services such as continuous one-on-one nursing services during the school day "in order to help guarantee that students . . . are integrated into the public schools"]).

VII. Conclusion

In summary, the parties agree that the district will provide the student with individualized private transportation and a 1:1 paraprofessional to and from school, the district will fund an assistive technology evaluation at a rate not to exceed $2,500, and the district will fund an OT evaluation at a rate not to exceed $2,000. Further, the IHO failed to address all of the parent's requested relief and erred by failing to grant an award of 264 hours of compensatory psychotherapy services.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED

IT IS ORDERED that the IHO's decision, dated November 2, 2020, is modified by reversing those portions which failed to award compensatory psychotherapy services and denied the parent's request for transportation;

IT IS FURTHER ORDERED that the district shall fund 264 hours of compensatory psychotherapy services;

IT IS FURTHER ORDERED that unless the parties otherwise agree, the district shall fund an assistive technology evaluation by an evaluator of the parent's choosing at a rate not to exceed $2,500, and an OT evaluation by an evaluator of the parent's choosing at a rate not to exceed $2,000; and

IT IS FURTHER ORDERED that, unless the parties otherwise agree, the district shall provide special transportation for the student for the 2020-21 school year, consisting of individualized private transportation with a 1:1 paraprofessional.

Dated: **Albany, New York**
March 10, 2021

SARAH L. HARRINGTON
STATE REVIEW OFFICER