The University of the State of New York

The State Education Department
State Review Officer
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No. 21-040

Application of a STUDENT WITH A DISABILITY, by his parents, 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:
Cuddy Law Firm, PLLC, attorneys for petitioners, by Benjamin M. Kopp, Esq.

Judy Nathan, Interim Acting General Counsel, attorneys for respondent, by Thomas W. MacLeod, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which dismissed some of the issues raised during the hearing as being moot. 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[a]). 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

Given the limited nature of the appeal, the parties' familiarity with the student's educational history and the procedural history of this matter is presumed and will not be recited in detail. Briefly, a CSE convened on May 26, 2017 to develop an IEP for the student for the 2017-18 school year (Parent Ex. D). The CSE determined that the student remained eligible for special education as a student with a learning disability and recommended a 12:1+1 special class placement for math, English language arts (ELA), social studies, and science, along with two periods per week of special education teacher support services (SETSS), and related services, including individual and group counseling, individual occupational therapy (OT), and group speech-language therapy (id. at pp. 1, 8-9).

The parents challenged the recommendations contained in the May 2017 IEP and in a decision dated April 20, 2018, an IHO determined that the district failed to meet its burden of proving its recommendations were appropriate and that the Lowell School (Lowell) was an appropriate placement for the student for the 2017-18 school year (Parent Ex. B).[1] The IHO in that matter directed the district to fund the cost of the student's tuition at Lowell for the 2017-18 school year (id.).

A CSE convened on March 7, 2018, found that the student remained eligible for special education as a student with a learning disability, and recommended a similar program to what was recommended in the May 2017 IEP; including a 12:1+1 special class placement for math, ELA, social studies, and science, along with SETSS, individual and group counseling, individual OT, and group speech-language therapy (Parent Ex. C at pp. 1, 13-14).

In a letter dated June 15, 2018, the parents informed the district that the student would attend Lowell for the 2018-19 school year at public expense (Parent Ex. J).

The parents filed a due process complaint notice, dated July 5, 2018, asserting that the district denied the student a free appropriate public education (FAPE) for the 2018-19 school year, which included allegations that the district did not develop a new IEP for the student for the 2018-19 school year and that the May 2017 IEP was not appropriate due to the insufficiency of the evaluative information available to the CSE, CSE composition, inappropriate annual goals, and an inappropriate special class recommendation (Parent Ex. A at pp. 3-5). The due process complaint notice requested funding for the unilateral placement of the student at Lowell for the 2018-19 school year and further requested pendency at Lowell based on an April 2018 IHO decision which found that the district denied the student a FAPE for the 2017-18 school year and that the parents' placement of the student at Lowell was appropriate (id. at p. 6).

On August 16, 2018 the parties convened for a prehearing conference and set a date to have a hearing on pendency (Tr. pp. 1-4).

On August 29, 2018 the parties convened for a pendency hearing, during which the parents requested pendency at the Lowell School based on an April 2018 IHO Decision and the district agreed (Tr. pp. 5-9; see Parent Ex. B). On the same day, the IHO issued an interim decision finding that the student's placement for the pendency of this proceeding was the placement identified in the April 2018 IHO Decision, "including, funding and/or reimbursement of tuition at the Lowell School" (Dist. Ex. 4 at p. 4).

Approximately one year after the pendency hearing, the parents submitted an amended due process complaint notice, dated August 6, 2019, which asserted a denial of FAPE for the 2018-19 and 2019-20 school years (Parent Ex. N). The amended due process complaint notice included allegations that the district did not provide a school location letter for either school year and did not develop a new IEP for the 2019-20 school year (id. at p. 3). It also included allegations that the May 2017 and March 2018 IEPs were not appropriate, due to the sufficiency of the evaluative information available to the CSE, the lack of a transition assessment, the CSE composition, the

[1] Lowell is a nonpublic school that has been approved by the Commissioner of Education as a school with which districts may contract for the instruction of students with disabilities (see 8 NYCRR 200.1[d], 200.7).

appropriateness of the annual goals, and the appropriateness of the special class recommendation (id. at pp. 4-6). As relief, the parents requested a finding that the district denied the student a FAPE for the 2018-19 and 2019-20 school years and funding for the cost of the student's placement at Lowell for the 2019-20 school year (id. at pp. 7-8).

The parties appeared for a prehearing conference on December 6, 2019, during which they discussed the amended due process complaint notice and the status of settlement discussions (Tr. pp. 10-15).

A CSE convened on January 13, 2020 and found the student continued to be eligible for special education as a student with a learning disability (Dist. Ex. 1). The CSE recommended a 12:1+1 special class placement in an approved nonpublic day school along with related services, including individual and group counseling, individual OT, and individual and group speech-language therapy (id. at pp. 14, 17-18). As of January 29, 2020, the district's central based support team agreed to place the student at Lowell (Parent Ex. II).

The parties convened for a "status conference" on March 24, 2020, during which the parties discussed a second amended due process complaint notice filed by the parents regarding the January 2020 IEP (Tr. pp. 16-29). The district representative indicated that he would try to get approval to accept the parents' second amended due process complaint notice and also indicated that he wanted to make a motion to dismiss "because . . . the pendency offered to the child has rendered the Parent's due process complaint moot" (Tr. pp. 19-21). The parents objected to the district's motion on the basis that "it is a case that is capable of repetition and evading review, due to the [district's] delay in seeking determination, and especially trying to drag this out for two years" (Tr. p. 20).

In April 2020, the parents moved for summary judgment and the district submitted opposition to the parents' motion in May 2020 and cross-moved for summary judgment. The parents replied to the district's cross-motion in June 2020 and the district responded in July 2020. According to the IHO, a decision on these motions was held in abeyance while the parties participated in settlement discussions (December 7, 2020 IHO Decision at p. 3).

On July 22, 2020, the IHO issued an order denying consolidation of this matter with a due process complaint notice filed by the parents regarding the second half of the 2019-20 school year (July 22, 2020 Interim IHO Decision).

The parties next convened on August 4, 2020, for what the IHO described as a "continued hearing," during which the parties presented arguments regarding the parents' motion for summary judgment and the district's cross-motion (Tr. pp. 30-57).

The parties convened for status conferences on September 14, 2020 and October 19, 2020 during which counsel for the parents and the district representative indicated that the parties were working towards settlement (Tr. pp. 58-67).

The district submitted a motion to dismiss the parents' claims regarding the 2018-19 and 2019-20 school years asserting that the parents' claims were moot because the parents had received all of their requested relief, i.e. placement of the student at Lowell for both school years at public expense. The parents submitted opposition to the district's motion on November 8, 2020 alleging

that their claims were not moot because the capable of repetition yet evading review exception to mootness applied. According to the parents, although the district changed the student's IEP in January 2020 and recommended placement at Lowell, the parents had a "reasonable expectation" that the district would revert its recommendations to what the parents described as prior inappropriate recommendations.

Another status conference was held on November 10, 2020, at which time, the IHO had the parties restate their positions regarding their respective motions (Tr. pp. 68-74). In response to the IHO asking what would be left to hear if a hearing were held, counsel for the parents replied that "[t]here still need to be determinations on the program that the [district] was actually recommending" (Tr. pp. 71-72).

In an interim decision dated December 7, 2020, the IHO found that there were issues of fact related to whether the district offered the student a FAPE for the 2018-19 school year, that the district conceded that it did not offer the student a FAPE for the 2019-20 school year, and that because the parents had received all of the requested relief all other issues were moot (December 7, 2020 IHO Interim Decision).[2] Of note, the IHO found that the parents' claims were not capable of repetition yet evading review, noting that the district conceded a FAPE for the 2019-20 school year and that although the parents filed a due process complaint notice regarding a subsequent school year, the requested relief included compensatory education and requests for evaluations rather than tuition reimbursement (id. at p. 6). The IHO also addressed equitable considerations, finding that they did not weigh against awarding relief, but also that a determination as to equities was moot as "any changes in the balancing of the equities would not change the relief requested" (id. at pp. 6-7). The IHO denied both parties' motions for summary judgment regarding the district's offer of FAPE for the 2018-19 school year, granted the district's motion to dismiss the issue of the appropriateness of Lowell for the 2018-19 school year as moot, and granted the parents' motion for summary judgment finding that the district did not offer the student a FAPE for the 2019-20 school year (id. at p. 8). The IHO directed that a hearing would take place regarding the final issue to be resolved in this matter, whether the district offered the student a FAPE for the 2018-19 school year (id.).

The parties appeared for a final hearing in this matter on December 30, 2020, during which the parties submitted evidence (Tr. pp. 75-92). The district indicated it was submitting documentary evidence regarding the 2018-19 school year, that it did not have any witnesses available, and that it rested its case on the documentary evidence (Tr. p. 87).

In a final decision dated January 12, 2021, the IHO determined that the district failed to meet its burden of showing that it offered the student a FAPE for the 2018-19 school year because the district did not present any witnesses and the documentary evidence showed that student's IEP for the 2018-19 school year was based on the same evaluations and recommendations as had been found to deny the student a FAPE for the prior school year (IHO Decision at p. 8).

[2] Although the interim decision was styled as a final decision insofar as it included a statement of the parties' right to appeal, it did not finally determine all of the issues in the proceeding and thus was not appealable at the time it was issued.

IV. Appeal for State-Level Review

The parents appeal. The main issue presented by the parents is that the IHO erred in the December 2020 interim decision by finding that the funding of the student's placement at Lowell through pendency rendered the parents' claims moot, particularly as to the appropriateness of Lowell for the 2018-19 and 2019-20 school years, and as to equitable considerations.[3] The parents also allege that the IHO erred in failing to grant the parents' motion for summary judgment as to the district's provision of a FAPE for the 2018-19 school year in the December 2020 interim decision and in not addressing the parents' allegations that the district delayed the hearing in bad faith. The parents argue that the IHO should have granted the parents' summary judgment motion in its entirety and that the IHO's final determination in January 2021 should be vacated as moot.

In an answer, the district responds to the parents' allegations and affirmatively requests that the IHO's decision finding that the district denied the student a FAPE for both the 2018-19 and 2019-20 school years and that the remainder of the issues were moot due to the parents receiving the requested relief through pendency be upheld.

V. Discussion

Initially, the parents seek review of the IHO's decision denying their motion for summary judgment as to the provision of FAPE for the 2018-19 school year. However, the district has not cross-appealed from the IHO's determinations that the district did not offer the student a FAPE for either the 2018-19 or the 2019-20 school years. Therefore, those determination have become final and binding on the parties and shall not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; 279.8[c][4]).

The IDEA and State regulations provide that only a party who has been "aggrieved" by the decision of an IHO may appeal an IHO's decision to an SRO (20 U.S.C. § 1415[g][1]; 8 NYCRR 200.5[k][l]; see J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9—*10 [S.D.N.Y. Nov. 27, 2012 see also Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 385 [N.D.N.Y. 2001] [holding that "[t]he administrative appeal process is available only to a party which is 'aggrieved' by an IHO's determination"]). Although the parents may have preferred to succeed in the resolution of their summary judgment motion weeks earlier, as noted above, the IHO's final decision resolved the issue of FAPE entirely in the parent's favor; therefore, the parent is not entitled to appeal this portion of the IHO's decision (see D.N. v. New York City Dep't of Educ., 905 F. Supp. 2d 582, 588 [S.D.N.Y. 2012] [holding that the parent obtained all the relief she sought and therefore was not aggrieved and had no right to cross-appeal any portion of the IHO decision, including unaddressed issues]). As such, the parents are not entitled to appeal the IHO's favorable

[3] I note this request for review was an earlier submission in what turned into a growing string of pleadings from the firm representing the parents that failed to comply with the form requirements of Part 279, and as particularly relevant in this case, the practice regulations require that " each issue [be] numbered and set forth separately . . . identifying the precise rulings, failures to rule, or refusals to rule presented for review" (NYCRR 279.8 [c][2] [emphasis added]; Application of a Student with a Disability, Appeal No. 21-090). Under the circumstances, I will refrain from dismissing the parents' pleading for failure to comply with practice regulations due to the limited extent of the defects in this case and the firm's more recent efforts to correct these deficiencies going forward and conform its pleadings to the requirements. But once again, I strongly caution parents' counsel to prepare his submissions with more care in any future matters filed with the Office of State Review.

findings on the issue of FAPE, even if they do not agree with the IHO's ruling to grant the district a further opportunity to be heard on issues of fact (20 U.S.C. § 1415[g][1]; 8 NYCRR 200.5[k][l]).

Turning to the IHO's finding in the December 2020 interim decision that the remaining issues, related to the appropriateness of the parents' unilateral placement of the student at Lowell and equitable considerations for the 2018-19 and 2019-20 school years, have become moot, a dispute between parties must at all stages be "real and live," and not "academic," or it risks becoming moot (Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84 [2d Cir. 2005]; see Toth v. City of New York Dep't of Educ., 720 Fed. App'x 48, 51 [2d Cir. Jan. 2, 2018]; F.O. v. New York City Dep't of Educ., 899 F. Supp. 2d 251, 254 [S.D.N.Y. 2012]; Patskin v. Bd. of Educ. of Webster Cent. Sch. Dist., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *12 [E.D.N.Y. Oct. 30, 2008]; J.N. v. Depew Union Free Sch. Dist., 2008 WL 4501940, at *3-*4 [W.D.N.Y. Sept. 30, 2008]; see also Coleman v. Daines, 19 N.Y.3d 1087, 1090 [2012]; Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 [1980]). In general, cases dealing with issues such as desired changes in IEPs, specific placements, and implementation disputes may become moot at the end of the school year because no meaningful relief can be granted (see, e.g., V.M. v. N. Colonie Cent. Sch. Dist., 954 F. Supp. 2d 102, 119-21 [N.D.N.Y. 2013]; M.S. v. New York City Dep't of Educ., 734 F. Supp. 2d 271, 280-81 [E.D.N.Y. 2010]; Patskin, 583 F. Supp. 2d at 428-29; J.N., 2008 WL 4501940, at *3-*4; but see A.A. v. Walled Lake Consol. Schs., 2017 WL 2591906, at *6-*9 [E.D. Mich. June 15, 2017] [considering the question of the "potential mootness of a claim for declaratory relief"]). Administrative decisions rendered in cases that concern such issues that arise out of school years since expired may no longer appropriately address the current needs of the student (see Daniel R.R. v. El Paso Indep. Sch. Dist., 874 F.2d 1036, 1040 [5th Cir. 1989]; Application of a Child with a Disability, Appeal No. 07-139; Application of the Bd. of Educ., Appeal No. 07-028; Application of a Child with a Disability, Appeal No. 06-070; Application of a Child with a Disability, Appeal No. 04-007).

However, a claim may not be moot despite the end of a school year for which the student's IEP was written, if the conduct complained of is "capable of repetition, yet evading review" (see Honig v. Doe, 484 U.S. 305, 318-23 [1988]; Toth, 720 Fed. App'x at 51; Lillbask, 397 F.3d at 84-85; Daniel R.R., 874 F.2d at 1040). The exception applies only in limited situations (City of Los Angeles v. Lyons, 461 U.S. 95, 109 [1983]), and is severely circumscribed (Knaust v. City of Kingston, 157 F.3d 86, 88 [2d Cir. 1998]). It must be apparent that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration" (Murphy v. Hunt, 455 U.S. 478, 482 [1982]; see Knaust, 157 F.3d at 88). Many IEP disputes escape a finding of mootness due to the short duration of the school year facing the comparatively long litigation process (see Lillbask, 397 F.3d at 85). Controversies are "capable of repetition" when there is a reasonable expectation that the same complaining party would be subjected to the same action again (Weinstein v. Bradford, 423 U.S. 147, 149 [1975]; Toth, 720 Fed. App'x at 51; see Hearst Corp., 50 N.Y.2d at 714-15). To create a reasonable expectation of recurrence, repetition must be more than theoretically possible (Murphy, 455 U.S. at 482; Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet, 260 F.3d 114, 120 [2d Cir. 2001]). Mere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or demonstrated probability of recurrence (Russman, 260 F.3d at 120; but see A.A., 2017 WL 2591906, at *7-*9 [finding that the controversy as to "whether and to what extent the [s]tudent can be mainstreamed" constituted a "recurring controversy [that] will evade review

during the effective period of each IEP for the [s]tudent"]; see also Toth, 720 Fed. App'x at 51 [finding that a new IEP that did not include the service requested by the parent established that the parent's concern that the prior IEP would be repeated was not speculative and the "capable of repetition, yet evading review" exception to the mootness doctrine applied]). However, generally, courts have taken a dim view of dismissing a Burlington/Carter reimbursement case as moot because all of the relief has been obtained through pendency (see, e.g., New York City Dep't of Educ. v. S.A., 2012 WL 6028938, at *2-*3 [S.D.N.Y. Dec. 4, 2012]).

The student's placement for the pendency of this proceeding was established by the IHO's interim August 2018 interim decision ordering the district to fund the student's placement at Lowell retroactive to the filing of the due process complaint notice on July 5, 2018 (Dist. Ex. 4). Pursuant to pendency, the district is responsible for paying the student's tuition at Lowell for the entirety of the 2018-19 and the 2019-20 school years. Accordingly, as determined by the IHO the parents have received all of their requested relief (see December 7, 2020 IHO Decision at p. 6; Parent Ex. N; Dist. Ex. 4).

Turning next to the possible application of the "capable of repetition yet evading review" exception to mootness, the parents' arguments related to the appropriateness of the unilateral placement of the student at Lowell are neither evading review nor can they reasonably be expected to be repeated. First, the appropriateness of Lowell for the student has already been determined in a proceeding related to the 2017-18 school year (see Parent Ex. B). Second, as of January 2020, the district agreed to place the student at Lowell (Parent Ex. II). While the parents argue on appeal that the district could change its decision placing the student at Lowell, this assertion is entirely speculative.[4] Additionally, the parents do not explain why it is necessary to have a determination as to the appropriateness of Lowell for the 2018-19 and 2019-20 school years, when there has already been a determination as to the appropriateness of Lowell for the 2017-18 school year and the district has agreed to place the student at Lowell as of January 2020. The fact that the student may eventually be reassessed in accordance with the IDEA is also not a sufficient basis to overcome a finding of mootness (see M.S. ex rel. M.S. v. New York City Dep't of Educ., 734 F. Supp. 2d 271, 280 [E.D.N.Y. 2010]).

[4] In a case such as this, wherein the district and its CSE have adopted the parents' viewpoint regarding the placement of the student, I am not even convinced that the parents have advanced a proper argument regarding which exception to the mootness doctrine is at issue. The exception for discussion should more likely be the "voluntary cessation" doctrine, that is, that the district CSE has ceased recommending a placement that the parent disagrees with, but only to trigger mootness. "Voluntary cessation does not moot a case or controversy unless 'subsequent events ma[ke] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur'" (Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 719 [2007]). The Second Circuit has observed that "[t]he voluntary cessation of allegedly illegal conduct usually will render a case moot if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation" (Lillbask, 397 F.3d at 88, quoting Lamar Adver. of Penn, LLC v. Town of Orchard Park, 356 F.3d 365, 375 [2d Cir. 2004] [internal quotations omitted]). The Court also noted that where "the challenged conduct has only been proposed but never implemented because a stay-put order has maintained the status quo, it is the first factor that is critical to mootness analysis" (id.). Here, where even the CSE has agreed with the parents to place the student at Lowell and that change has in fact been implemented both substantively and as a matter of pendency, the mere allegation that the CSE could someday change its view regarding the student's placement is too speculative to conclude that this exception to mootness should apply in this proceeding.

Finally, the parents request a finding that the district unreasonably extended the litigation in this matter, asserting that the district was not attempting to settle this matter in good faith.[5] 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]). 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]).[6] 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.).

Certainly, with the hearing in this matter taking place over the course of more than two years, without any witness testimony, it is reasonable to question whether, at some point, the parties' requests for extensions should have been circumscribed. However, as noted above, the parents received, through pendency, all of the relief that had been requested during the course of the impartial hearing. Accordingly, a finding as to who bears the most fault for the long duration this proceeding has been litigated due in part to the parties' attempts at settlement will not alter the outcome of this proceeding and I decline to engage in such an unproductive endeavor.

VII. Conclusion

In summary, a review of the evidence in the hearing record does not support a modification of the IHO's determinations.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
July 7, 2021

JUSTYN P. BATES
STATE REVIEW OFFICER

[5] The parents submit additional evidence consisting of email correspondence between the parties and the IHO in support of their allegation that the district protracted the litigation; however, this additional evidence is not necessary to a determination in this matter and will not be considered.

[6] During this impartial hearing, State regulation has provided 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]).