The University of the State of New York

The State Education Department
State Review Officer
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No. 24-433

**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:**
Brain Injury Rights Group, attorneys for petitioner, by Peter G. Albert, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Thomas W. MacLeod, Esq.

## DECISION

### I. Introduction

This State-level administrative review is being conducted subsequent to an order of remand issued by the United States District Court for the Southern District of New York for adjudication of petitioner's (the parent's) appeal of an impartial hearing officer's (IHO's) decision issued after remand (see Donohue v. Banks, 2023 WL 6386014 [S.D.N.Y. Sept. 30, 2023]). The parent appeals from an IHO decision issued after remand which clarified a pendency determination that respondent (the district) shall fund the costs related to providing transportation services to her son only for each school day that her son attended International Academy for the Brain (iBrain) during pendency. The appeal must be dismissed.

### II. Overview—Administrative Procedures

This proceeding initially arose under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law.

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

As briefly mentioned at the outset, this appeal arises after an order of remand issued by the District Court directing the IHO to clarify the transportation aspects of his pendency determination (see Donohue v. Banks, 2023 WL 6386014 (S.D.N.Y. Sept. 30, 2023)]). The underlying procedural history of this matter, as well as other appeals involving this student set forth in Application of a Student with a Disability, Appeal No. 23-052; Application of a Student with a Disability, Appeal No. 22-055; Application of a Student with a Disability, Appeal No. 19-

132; Application of the Dep't of Educ., Appeal No. 19-019; Application of a Student with a Disability, Appeal No. 18-116, will be briefly repeated as relevant here for discussion.

Briefly, the student has previously received diagnoses of cerebral palsy, scoliosis, seizure disorder, and cortical visual impairment (CVI); additionally, the student demonstrates "severe impairments in his cognition, language, vision, memory, attention, reasoning, abstract thinking, judgment, problem solving, and information processing and speech" (Dist. Ex. 2 at p. 1). On April 27, 2022, the CSE convened and found the student eligible for special education and related services as a student with a traumatic brain injury (TBI) and recommended a 12-month program in a 12:1+(3:1) special class in a specialized school together with five 60-minute sessions per week of individual occupational therapy (OT), five 60-minute sessions per week of individual physical therapy (PT), two 60-minute sessions per week of individual vision education services, four 60-minute sessions per week of individual speech-language therapy, one 60-minute session per week of group (3:1) speech-language therapy, along with the support of a full-time 1:1 health paraprofessional for safety, feeding, and ambulation, and individual school nurse services as needed (see Application of a Student with a Disability, Appeal No. 23-052).

The student attended iBrain during the 2022-23 school year (see Parent Ex. F at p. 1).[1] On June 16, 2022, the parent executed an agreement with Sisters Travel and Transportation Services, LLC (Sisters Travel) for the provision of transportation of the student to and from iBrain for the 2022-23 school year (see Parent Ex. F; see also Application of a Student with a Disability, Appeal No. 23-052).

In a due process complaint notice dated July 6, 2022, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2022-23 school year and requested an order finding that the student's pendency placement should be based on a May 23, 2021 IHO decision in a prior proceeding regarding the 2019-20 school year (see generally Parent Ex. A). As relief, the parent requested direct payment of the cost of tuition at iBrain for the 2022-23 extended school year as well as the cost of related services, and funding of special transportation (Parent Ex. A at pp. 7-8).

On October 28, 2022, the parties proceeded to an impartial hearing before an IHO appointed by the Office of Administrative Trials and Hearings (OATH) and addressed the student's pendency (stay-put) placement (Oct. 28, 2022 Tr. pp. 1-15).[2] Following the October 28, 2022 appearance, the IHO issued an interim decision addressing pendency, which determined that the parties did not dispute that a May 23, 2021 IHO decision regarding the 2019-20 school year governed the student's pendency placement in this proceeding (see Parent Ex. B). The IHO directed the district to fund the student's attendance, related services, 1:1 paraprofessional, 1:1

[1] The Commissioner of Education has not approved iBrain as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[2] The transcript volumes from the various hearing dates submitted to the Office of State Review were oftentimes not paginated consecutively. Accordingly, the transcript citations in this decision will reference the hearing date and corresponding page number.

private nurse, and special transportation services at iBrain from the date the due process complaint notice was filed until a final resolution of the matter was reached (id. at p. 5).[3]

The parent appealed the October 28, 2022 order of pendency to the United States District Court for the Southern District of New York (see Donohue, 2023 WL 6386014; see also IHO Ex. I). The District Court found that the October 28, 2022 pendency order was "unclear" as to whether the district was required "to reimburse transportation costs only for days attended or for the full transportation contract regardless of actual attendance" (Donohue, 2023 WL 6386014 at *11). Further, the Court stated that the pendency order required the district to "fund transportation for [the student] to and from [iBrain]" (id.). As such, the District Court remanded the case back to the IHO that issued the October 28, 2022 pendency order for further clarification consistent with the decision (id. at *12).

An impartial hearing was held on remand from the District Court on August 28, 2024 (Tr. pp. 1-28), the district entered no exhibits into the hearing record, the parent entered several documents into evidence (see Parents Exs. A-B; F; L-M), and the IHO entered one exhibit into the hearing record (see IHO Ex. I). Neither party called any witnesses but both parties placed their respective positions on the record (Aug. 28, 2024 Tr. pp. 9-23).

In a decision dated August 29, 2024, the IHO found that the October 28, 2022 pendency order "must be interpreted" as requiring the district to reimburse the transportation costs solely for the days in which the student attended iBrain during the pendency of the proceedings (IHO Decision at p. 3). The IHO rejected the parent's arguments that the October 28, 2022 pendency order should cover the costs of the parent's transportation contract regardless of whether the student used the transportation services (id. at p. 4). Specifically, the IHO acknowledged that for the 2022-23 school year, the student was enrolled at iBrain and received private special transportation services to and from iBrain (id.). The IHO further noted that the purposes of the pendency provisions were to "maintain the educational status quo while the parties' dispute [was] being resolved" so he therefore reasoned that the October 28, 2022 pendency order maintained the educational status quo by requiring the district to fund "door-to-door special transportation, not fund the transportation contract entered into by the [p]arent" (id.). Accordingly, the IHO determined that the district's pendency obligation to fund transportation was only for those days in which the student attended iBrain (id. at pp. 4-5).

## IV. Appeal for State-Level Review

The parent appeals the IHO's decision dated August 28, 2024 that limited the pendency funding of the transportation costs solely to those days in which the student attended iBrain. The parent argues that the district should fund, for purposes of pendency, the actual costs contained in the parent's transportation services agreement with Sisters Travel. The parent argues that the IHO's decision would require the parent to "renegotiate the contract" with Sisters Travel (Req. for Rev.

[3] In a final decision dated February 13, 2023, the IHO found that the district failed to meet its burden that it offered a FAPE to the student for the 2022-23 school year (Parent Ex. L at pp. 4-5). Thereafter, the parent appealed the February 13, 2023 decision in which it was found that the parent met her burden that iBrain was an appropriate unilateral placement for the 2022-23 school year and that there were no equitable considerations that warranted a reduction of the costs of the iBrain tuition or transportation expenses (see Application of a Student with a Disability, Appeal No. 23-052; Parent Ex. M at p. 21).

¶ 9). Additionally, according to the parent, case law from the United States District Court for the Southern District of New York supports a finding that transportation funding must be pursuant to the terms of the contract and not whether the student used the transportation services. The parent asserts that the district did not offer the student other transportation options that were less costly than Sisters Travel and did not argue that the transportation costs were excessive. The parent seeks a finding that the district fund the full amount of transportation expenses as per the contract between the parent and Sisters Travel during pendency.

In an answer, the district generally denies the material allegations contained in the request for review. The district argues that the IHO's decision should be upheld based upon recent decisions in the United States District Court for the Southern District of New York which similarly found that transportation expenses should only be awarded for those days in which the student "actually" used the transportation services to attend school. Furthermore, the district argues that equities support the district's arguments that it should not be required to pay for services that were not rendered.[4]

## V. Applicable Standards

The IDEA and the New York State Education Law require that a student remain in his or her then current educational placement, unless the student's parents and the board of education otherwise agree, during the pendency of any proceedings relating to the identification, evaluation or placement of the student (20 U.S.C. § 1415[j]; Educ. Law §§ 4404[4]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]; see Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 531 [2d Cir. 2020]; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 170-71 [2d Cir. 2014]; Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist., 386 F.3d 158, 163 [2d Cir. 2004], citing Zvi D. v. Ambach, 694 F.2d 904, 906 [2d Cir. 1982]; M.G. v. New York City Dep't of Educ., 982 F. Supp. 2d 240, 246-47 [S.D.N.Y. 2013]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *20 [E.D.N.Y. Oct. 30, 2008]; Bd. of Educ. of Poughkeepsie City Sch. Dist. v. O'Shea, 353 F. Supp. 2d 449, 455-56 [S.D.N.Y. 2005]).[5] Pendency has the effect of an automatic injunction, and the party requesting it need not meet the requirements for injunctive relief such as irreparable harm, likelihood of success on the merits, and a balancing of the hardships (Zvi D., 694 F.2d at 906; see Wagner v. Bd. of Educ. of Montgomery County, 335 F.3d 297, 301 [4th Cir. 2003]; Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 [3d Cir. 1996]). The purpose of the pendency provision is to provide stability and consistency in the education of a student with a disability and "strip schools of the unilateral authority they had traditionally employed to exclude disabled students . . . from school" (Honig v. Doe, 484 U.S. 305, 323 [1987] [emphasis in original]; Evans v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist., 921 F. Supp. 1184, 1187 [S.D.N.Y. 1996], citing Bd. of Educ. of City

[4] The parent submitted a reply to the district's answer. State regulation limits the scope of a reply to "any claims raised for review by the answer . . . that were not addressed in the request for review, to any procedural defenses interposed in an answer . . . or to any additional documentary evidence served with the answer" (8 NYCRR 279.6[a]). In this instance, the parent's reply merely reasserts many of the same allegations as raised in the request for review and does not appear to address any of the issues permitted in a reply; accordingly, the parent's reply will be disregarded,

[5] In Ventura de Paulino, the Court concluded that parents may not transfer a student from one nonpublic school to another nonpublic school and simultaneously transfer a district's obligation to fund that pendency placement based upon a substantial similarity analysis (see Ventura de Paulino, 959 F.3d at 532-36).

of New York v. Ambach, 612 F. Supp. 230, 233 [E.D.N.Y. 1985]). A student's placement pursuant to the pendency provision of the IDEA is evaluated independently from the appropriateness of the program offered the student by the CSE (Mackey, 386 F.3d at 160-61; Zvi D., 694 F.2d at 906; O'Shea, 353 F. Supp. 2d at 459 [noting that "pendency placement and appropriate placement are separate and distinct concepts"]). The pendency provision does not require that a student remain in a particular site or location (Ventura de Paulino, 959 F.3d at 532; T.M., 752 F.3d at 170-71; Concerned Parents & Citizens for the Continuing Educ. at Malcolm X Pub. Sch. 79 v. New York City Bd. of Educ., 629 F.2d 751, 753, 756 [2d Cir. 1980]; see Child's Status During Proceedings, 71 Fed. Reg. 46709 [Aug. 14, 2006] [noting that the "current placement is generally not considered to be location-specific"]), or at a particular grade level (Application of a Child with a Disability, Appeal No. 03-032; Application of a Child with a Disability, Appeal No. 95-16).

Under the IDEA, the pendency inquiry focuses on identifying the student's then-current educational placement (Ventura de Paulino, 959 F.3d at 532; Mackey, 386 F.3d at 163, citing Zvi D., 694 F.2d at 906). Although not defined by statute, the phrase "then current placement" has been found to mean either: (1) the placement described in the student's most recently implemented IEP; (2) the operative placement actually functioning at the time when the due process proceeding was commenced; or (3) the placement at the time of the previously implemented IEP (Dervishi v. Stamford Bd. of Educ., 653 Fed. App'x 55, 57-58 [2d Cir. June 27, 2016], quoting Mackey, 386 F.3d at 163; T.M., 752 F.3d at 170-71 [holding that the pendency provision "requires a school district to continue funding whatever educational placement was last agreed upon for the child"]; see Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 452 [2d Cir. 2015] [holding that a student's entitlement to stay-put arises when a due process complaint notice is filed]; Susquenita Sch. Dist. v. Raelee, 96 F.3d 78, 83 [3d Cir. 1996]; Letter to Baugh, 211 IDELR 481 [OSEP 1987]). Furthermore, the Second Circuit has stated that educational placement means "the general type of educational program in which the child is placed" (Concerned Parents, 629 F.2d at 753, 756), and that "the pendency provision does not guarantee a disabled child the right to remain in the exact same school with the exact same service providers" (T.M., 752 F.3d at 171). However, if there is an agreement between the parties on the student's educational placement during the due process proceedings, it need not be reduced to a new IEP, and the agreement can supersede the prior unchallenged IEP as the student's then-current educational placement (see Bd. of Educ. of Pawling Cent. Sch. Dist. v. Schutz, 290 F.3d 476, 483-84 [2d Cir. 2002]; Evans, 921 F. Supp. at 1189 n.3; Murphy v. Arlington Central School District Board of Education, 86 F. Supp. 2d 354, 366 [S.D.N.Y. 2000], aff'd, 297 F.3d 195 [2d Cir. 2002]; see also Letter to Hampden, 49 IDELR 197 [OSEP 2007]). Moreover, a prior unappealed IHO decision may establish a student's current educational placement for purposes of pendency (Student X, 2008 WL 4890440, at *23; Letter to Hampden, 49 IDELR 197).

**VI. Discussion**

In accord with the September 30, 2023 District Court's Order that the IHO clarify its October 28, 2022 Order on Pendency and, given that the District Court only sought clarification regarding the transportation aspects of the pendency order and there is a final and binding decision on the merits, the sole issue to be resolved at this juncture is the parent's assertion that the IHO erred in clarifying that the pendency order only required district funding for transportation that the student actually used.

In reviewing language in an order that is ambiguous, the entire record and circumstances surrounding the formation of the order may be considered to ascertain its meaning (U.S. v. Spallone, 399 F.3d 415, 424 [2d. Cir. 2005]).

Moreover, as noted above, a student's placement pursuant to the pendency provision of the IDEA is evaluated independently from the appropriateness of the program offered the student by the CSE, the appropriateness of a private school that may form the basis of pendency, or equitable considerations that may be taken to account in awarding final relief. Rather pendency has the effect of an automatic injunction to prevent the disruption of a student's education during a due process hearing and the pendency inquiry is narrowly focused on identifying the student's then-current educational placement.

Here, on October 28, 2022, the IHO held a pendency hearing (Oct. 28, 2022 Tr. pp. 1-15). Both parties submitted evidence which included the May 23, 2021 IHO decision (Oct. 28, 2022 Tr. p. 3; see Parent Pendency Ex. E). The district asserted that pendency was found in the May 2021 IHO decision as it was the last unappealed decision (Oct. 28, 2022 Tr. pp. 8, 11, 13). The parent agreed with the position of the district and directed the IHO to the ordering clause of the decision that stated the student's pendency should consist of among other things "funding the cost of transportation" (Oct. 28, 2022 Tr. pp. 9-10, 13; Parent Pendency Ex. E at p. 55).[6] During the pendency hearing, the IHO confirmed that the parties agreed on pendency (Oct. 28, 2022 Tr. p. 11). The IHO issued an October 28, 2022 interim order on pendency reflecting the parties' agreement that pendency was based upon the May 23, 2021 IHO decision (IHO Order on Pendency). The IHO incorporated the language from the May 23, 2021 IHO decision, into the October 28, 2022 pendency order as follows:

> At the [p]endency [h]earing the parties agreed that pendency should be based on the Findings of Fact and Decision dated May 23, 2021 ("FOFD"). The FOFD orders the District to "(1) reimburse the family for their out of pocket tuition costs for the child's placement (inclusive of the costs of related services) during the 2019-2020 school year; (2) pay directly to the school any outstanding amount as yet unpaid for the program and related services for the 2019-2020 school year; and (3 fund the costs of transportation actually provided to the student during the 2019-2020 school year at a fair market rate based on comparable transportation, in a comparable vehicle with comparable accommodations, to and from the school.

(compare IHO Order on Pendency at pp. 4-5 , with Parent Pendency Ex. E at p. 55 [emphasis in original]). The IHO then ordered for purposes of pendency that the district "fund transportation" for the student to and from iBrain "for the duration of pendency in this matter" (IHO Order on Pendency at p. 5).

[6] At the October 28, 2022 pendency hearing, the parent submitted a proposed order of pendency stating that pendency lied within a March 27, 2022 IHO decision; however, because at that time that decision was appealed to the Office of State Review, the parent agreed with the district that pendency could not be based upon the March 2022 IHO decision (Oct. 28, 2022 Tr. pp. 8, 11; see Parent Pendency Ex. B). The March 27, 2022 IHO decision was appealed to the Office of State Review (Application of a Student with a Disability, Appeal No. 22-055) and later appealed to the United States District Court for the Southern District of New York in C. v Banks, 2024 WL 1309419 (S.D.N.Y. Mar. 27, 2024) which affirmed the decision of the State Review Officer.

Moreover, the parents' arguments in their request for State-level review that the IHO lacked any authority to alter the terms of the transportation contract do not warrant modification of the IHO's clarification. The issues of appropriateness of the transportation services or the costs thereof go to the substance of the ultimate dispute between the parties, not pendency. As repeatedly emphasized in this decision, the parties' dispute involves the interpretation of the IHO's pendency order, which was meant to memorialize the student's "then-current placement." It is undisputed that the IHO found that pendency was based on the May 23, 2021 decision issued by an IHO in a prior proceeding (see Parent Pendency Ex. E). Moreover, this finding of the IHO is final and binding as neither party appealed the interim decision (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z., 2013 WL 1314992, at *6-*7, *10). Review of the prior May 23, 2021 IHO decision reveals that the IHO in the prior matter found that the district was responsible for the student's special transportation costs "actually provided to the student" (Parent Pendency Ex. E at p. 55). The IHO's October 28, 2022 pendency order includes this language (IHO Order on Pendency at pp. 4-5). Thus, a review of the plain language of the prior IHO's decision that the parent agreed formed the basis for the student's pendency placement in the present matter further reinforces that, under pendency, the district is responsible for only the days the student used the transportation services.

Furthermore, as noted by the District Court in Donohue, "IHOs are plainly in the best position to interpret their own orders and, to the extent the existing orders do not resolve the parties' dispute, further factfinding may be warranted" (Donohue, 2023 WL 6386014, at *12 quoting Davis v Banks, 2023 WL 5917659, at *5 [SDNY Sept. 11, 2023]). Here, the IHO on remand from the District Court found that his October 28, 2022 pendency order "maintained the educational status quo by ordering the [district] to fund door-to-door special transportation, not fund the transportation contract" (IHO Decision at p. 4). The IHO further stated that "[a] final determination on the appropriateness of the transportation services and transportation contract could and must only be made in a [f]indings of [f]act and [d]ecision based on the merits of the case" (id.). The IHO found that a merits determination on "the transportation claim via pendency would in effect be circumventing a merits hearing on the issue and put the cart before the horse" (id.).[7] Accordingly, the IHO found that the district's "pendency obligation" contained in the October 28, 2022 pendency order was for the district to fund the student's transportation services only for days in which the student attended iBrain during the pendency of this matter (id. at pp. 4-5).[8]

Thus, as the District Court directed, the IHO clarified that his October 2022 pendency order with respect to transportation of the student to and from iBrain was intended to require the district to fund the student's transportation services only for the days the student attended iBrain (IHO Decision at pp. 4-5). Accordingly, the IHO addressed the District Court's directive by offering a clarification of his original intent in issuing the pendency decision. Absent any contrary evidence

[7] As previously stated, a de facto merits determination on the transportation claim in the context of pendency would run afoul of the principle that "[w]hether the district has failed to provide a child's pendency entitlements is "evaluated independently" from the parents' claim as to the inadequacy of the IEP "because pendency placement and appropriate placement are separate and distinct concepts" (J.G. v. Kiryas Joel Union Free Sch. Dist., 777 F. Supp. 2d 606, 642 [S.D.N.Y. 2011], quoting Mackey, 386 F.3d at 162, and O'Shea, 353 F.Supp.2d at 459).

[8] The IHO mistakenly stated that the pendency order was dated September 26, 2022 when the actual pendency order was dated October 28, 2022.

and given the unavailing arguments made by the parent on appeal, upon my careful review of the hearing record, I find no reason to disturb the IHO's own interpretation of his pendency order (see Spallone, 399 F.3d at 424 [holding that substantial deference must be given to an issuing judge interpreting his own orders]; Blackwood Assocs., L.P., 153 F.3d 61, 66 [2d Cir. 1998] [explaining "the truism that the draftsman of a document is uniquely situated to understand the intended meaning of that document"]).

**VII. Conclusion**

Having found no reason to disturb the IHO's decision after remand dated August 29, 2024 clarifying his pendency order to require the district to fund the transportation costs for only the days the student attended iBrain, the necessary inquiry is at an end.

**THE APPEAL IS DISMISSED.**

**Dated:** **Albany, New York**
**January 23, 2025**

**CAROL H. HAUGE**
**STATE REVIEW OFFICER**