The University of the State of New York

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

No. 24-476

Application of a STUDENT WITH A DISABILITY, by her 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, Ltd., attorneys for petitioner, by Peter G. Albert, Esq.

Liz Vladeck, 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) to the extent it did not grant her request for respondent (the district) to fully fund the costs of her daughter's transportation services pursuant to her contract with Sisters Travel and Transportation Services, LLC (Sisters Travel), which provided for the student's travel to and from the International Academy for the Brain (iBrain) for the 2024-25 school year. 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

Given the limited issues on appeal, a full recitation of the student's educational history is not necessary. Briefly, on January 25, 2024, a CSE convened to conduct the student's annual review, and, finding the student eligible for special education as a student with a traumatic brain injury, developed an IEP for the student with an implementation date of February 12, 2024 (see

Dist. Ex. 1 at pp. 1, 49).[1] The February 2024 CSE recommended a 12-month program for the student consisting of a 12:1+(3:1) special class placement in a specialized school (id. at pp. 42-43). The student's February 2024 IEP recommended one 60-minute session per month of parent counseling and training, and that the student receive: three periods per week of adapted physical education; four 60-minute sessions per week of individual occupational therapy (OT); five 60-minute sessions per week of individual physical therapy (PT); four 60-minute sessions per week of individual speech-language therapy; one 60-minute session per week of group speech-language therapy; three 60-minute sessions per week of individual vision education services; and individual school nursing services as needed (id. at pp. 42-43). The February 2024 CSE also recommended that the student receive the following special transportation accommodations and services: "[t]ransportation from the closest safe curb location to school"; 1:1 paraprofessional services; a lift bus; and accommodation for a regular sized wheelchair (id. at p. 48).

On June 25, 2024, the parent executed an enrollment contract with iBrain for the student's attendance during the 2024-25 school year from July 2, 2024 through June 27, 2025 (see Parent Ex. A-E at pp. 1, 6).[2, 3] Additionally, the parent executed an undated transportation contract with Sisters Travel and Transportation Services, LLC (Sisters Travel) for the round-trip transportation of the student between her home and iBrain during the 2024-25 school year beginning on July 2, 2024 and concluding on June 27, 2025 (Parent Ex. A-F at pp. 1-2).

A. Due Process Complaint Notice

In a due process complaint notice dated July 2, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2024-25 school year based various procedural and substantive violations (see Parent Ex. A pp. 1-10). As relief, the parent sought an order directing the district to directly pay iBrain for the costs of the student's tuition in addition to the costs of her related services and the services of a 1:1 paraprofessional; to directly or prospectively fund the costs of the student's special education transportation services with "a 1:1 transportation nurse, air conditioning, a lift bus, and a regular-sized wheelchair, and limited travel time of 60 minutes"; to fund the costs of an independent educational evaluation (IEE) consisting of a psychological and neuropsychological evaluations and an educational needs assessment; and to reconvene a CSE meeting to "address changes if necessary" (id. at pp. 9-10).

[1] The student's eligibility for special education as a student with a traumatic brain injury is not in dispute (see 34 CFR 300.8[c][12]; 8 NYCRR 200.1[zz][12]).

[2] 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).

[3] Attachments to the parent's due process complaint notice are referenced by citing the complaint (Parent Ex. A) followed by the letter designation as marked on the attachments (i.e., Parent Ex. A-A through Parent Ex. A-F).

B. Impartial Hearing Officer Decision

After a pre-hearing conference on August 5, 2024 (Tr. pp. 1-19), an impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on September 5, 2024 and concluded on September 13, 2024 after three days of hearings (Tr. pp. 20-143). At the impartial hearing, the district did not produce any witnesses and relied upon its documentary evidence (Tr. p. 31).

In a decision dated September 17, 2024, the IHO found that the district failed to meet its burden to demonstrate that it offered the student a FAPE for the 2024-25 school year (IHO Decision p. 5). Moreover, the IHO found that, while the district submitted documents including the February 2024 IEP, it did not offer any explanation for the CSE's recommendations and the IEP contained unexplained discrepancies and internal inconsistencies (id. at pp. 5-7). As for iBrain, the IHO described the program provided to the student and noted evidence that the student had made progress (id. at p. 8).

The IHO found that equitable considerations weighed in favor of the parent's request for an award of funding for the costs of the student's tuition (IHO Decision at p. 9). Next, the IHO found that it was "undisputed that [s]tudent require[d] special roundtrip transportation" (id.). While the district argued that the transportation costs were "excessive and unreasonable," the IHO held this argument was unsupported as the district did not provide any evidence regarding a reasonable market rate (id.). The IHO found that, although the district offered to provide transportation services to the student, the district could not establish that its recommended transportation "was appropriate" (id.). On the other hand, the IHO found that the parent was using the transportation services to transport the student to medical appointments, which the district should not be required to fund (id.).

As relief, the IHO ordered the district to fund the cost of the student's tuition at iBrain for the 2024-25 school year, the cost of the specialized transportation from school to home only, and independent neuropsychological and assistive technology evaluations, and to reconvene the CSE if necessary, once the evaluations were completed (IHO Decision at pp. 9, 12).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO failed to make a determination that the unilateral placement at iBrain was appropriate, and failed to award direct payment to Sisters Travel for the full costs of the contract and, instead, required the parent to submit other documentation in order to secure payment.[4]

[4] The parent filed the following documents with the Office of State Review: a notice of intention to seek review dated October 17, 2024 including an "Affirmation of Service by Email" dated October 18, 2024; a notice of request for review and a request for review both dated October 28, 2024, along with an affidavit of verification, and an "Affirmation of Service by Email" dated October 28, 2024 indicating that the request for review was served via email on named attorneys for the district on the "88th day of October, 2024" (see Notice of Intention to Seek Rev.; Notice

In an answer, the district responds to the parent's allegations and argues that the IHO's decision should be upheld in its entirety. The district argues further that an explicit finding that iBrain was an appropriate placement is unnecessary given the parent was awarded tuition and transportation funding consistent with such a finding. In addition, the district argues that it should not be bound to the terms of the parent's contract with Sisters Travel and instead should only be required to pay for transportation services actually rendered to the student to and from school.[5]

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 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. 386, 399 [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"

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of Intention to Seek Rev. Aff. of Service; Req. for Rev.; Aff. of Service Req. for Rev.). Neither of parent's counsels' affirmations of service includes language conforming to the requirements for an affirmation, which must be subscribed and affirmed under the penalties of perjury which may include a fine or imprisonment (see CPLR 2106). In future matters, the parent's counsel should take care to ensure affirmations submitted to the Office of State Review contain the correct language.

[5] 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 district's answer does not include any of the necessary conditions precedent triggering the parent's right to file a reply and the parent's reply merely reasserts many of the same allegations as raised in the request for review; accordingly, the parent's reply will not be considered.

(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., 580 U.S. at 404). 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., 580 U.S. at 403 [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]).[6]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

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. Scope of Review

With respect to the appropriateness of the unilateral placement, the IDEA and federal 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]; 34 CFR. 300.514[b][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"]). On appeal, the parent requests a modification to the IHO's order to include an "explicit finding" that the student's unilateral placement was appropriate. However, a finding of appropriateness of a unilateral placement underlies an award of tuition reimbursement or funding, which the IHO granted in this instance (see IHO Decision at p. 12). Accordingly, as a matter of judicial efficiency, it is not necessary to reach the issue of the appropriateness of iBrain.

In addition, neither party has appealed from the IHO's determinations that the district failed to offer the student a FAPE for the 2024-25 school year and that equitable considerations (other than as related to the costs of transportation services) weighed in favor of the parents. Accordingly,

[6] 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., 580 U.S. at 402).

these findings have become final and binding on the parties and will not be further discussed (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]). The only remaining issue presented on appeal is whether the IHO erred in reducing the amount of reimbursement for transportation costs as they relate to the 2024-25 school year.

B. Transportation Costs

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).

Thus, among the factors that may warrant a reduction in tuition under equitable considerations is whether the frequency of the services or the rate for the services were excessive (see E.M., 758 F.3d at 461 [noting that whether the amount of the private school tuition was reasonable is one factor relevant to equitable considerations]). An IHO may consider evidence regarding whether the rate charged by the private agency was unreasonable or regarding any segregable costs charged by the private agency that exceed the level that the student required to receive a FAPE (see L.K. v. New York City Dep't of Educ., 2016 WL 899321, at *7 [S.D.N.Y. Mar. 1, 2016], aff'd in part, 674 Fed. App'x 100).

According to the parent's transportation agreement with Sisters Travel, Sisters Travel was responsible to transport the student between home and school (Parent Ex. A-F). The parent was responsible to pay for approximately 223 school days during the 12-month 2024-25 school year, whether or not the student used the transportation service on a particular day unless the transportation provider was at fault for the student not using the services (id. at p. 1, 2). The total amount of the transportation services was listed as $177,285 (id. at p. 2).

The parent argues that the district should be compelled to reimburse the student for the entirety of the transportation contract with Sisters Travel, as the IHO did not have the authority to "amend the terms" of the contract."[7, 8] Generally, an excessive cost argument focuses on whether the rate charged for services were reasonable and requires, at a minimum, evidence of not only the rate charged by the unilateral placement, but evidence of reasonable market rates for the same or similar services. Here, the IHO specifically found that the district did not present evidence of a reasonable market rate for transportation services and did not demonstrate that it could provide the student with appropriate transportation (IHO Decision at p. 9). The district does not cross-appeal the IHO's determinations in this regard. Accordingly, the only basis for a possible reduction of the transportation costs awarded relates to the IHO's finding that Sisters Travel provided the student transportation to medical appointments (id.).

The sole evidence on this issue came from the parent's testimony. The parent testified that, at times, Sisters Travel would pick the student up "to take her to her appointment and then pick her up from the appointment to take her back to school" (Tr. p. 175). The IHO found that the district should not be required to fund those trips (IHO Decision at p. 9). The parent's contract with Sisters Travel provided for transport twice daily, an "AM TRIP" and a "PM TRIP" (Parent Ex. A-F at p. 1). The contract specified the "pick-up" and "drop-off" locations for each school day were the student's home and school but did allow the parent to change the time or location for the transportation with notice (Parent Ex. A-F at p. 1). The parent's limited testimony on the issue seems to reference an additional trip or trips provided by Sisters Travel on certain days; however, without more, the evidence in the hearing record does not establish that the trips to and from medical appointments were part of the "School Transportation" contract with Sisters Travel such that the amount due under the contract should be deemed excessive and, therefore, subject to reduction.

Further, as the transportation contract provided for a total amount due whether or not the student used the transportation service on a particular day, the parent's submission of

[7] In support of the parent's contention that the award should include the full cost of the transportation contract with Sisters Travel, the parent relies on an SRO decision that does not support the contention for which it is cited (see Application of the Bd. of Educ., Appeal No. 22-139).

[8] In its answer, the district relies on Araujo v. New York City Department of Education, 2023 WL 5097982 (S.D.N.Y. Aug. 9, 2023), to support its position that the IHO should have limited the award of transportation costs because in awarding reimbursement for the contract amount would result in the inequitable transfer of liability from the parent to the district. In further support, the district points to a similar holding in Davis v. Banks, 2023 WL 5917659 (S.D.N.Y. Sept. 11, 2023). It is worth noting that none of the cases cited by the district are directly relevant to the issue being addressed on appeal, i.e. whether the award of funding for transportation should be reduced, as both of the matters cited by the district involved implementation of either unappealed pendency orders or an unappealed final IHO decision and, therefore, the cases focused on enforcement and the language included in the orders that were being enforced rather than a direct review of the merits of administrative decisions themselves (see Davis, 2023 WL 5917659 ["the sole source of the [district's] reimbursement obligations in each Plaintiff's case[s] is the applicable administrative order"]; Araujo, 2023 WL 5097982 ["[p]laintiffs have not met the IDEA's exhaustion requirement with respect to challenges to the [IHO's decision] itself, as opposed to [d]efendant's implementation of the [IHO's decision]]; Abrams, 2022 WL 523455 ["[t]he heart of this matter[] boils down to the [district's] legal obligations under the [p]endency [o]rders"]).

documentation of the student's use and times of service is not necessary in this instance (IHO Decision at p. 12).

Accordingly, to the extent the IHO's decision could be read to limit the award of funding for transportation, the parent's appeal is sustained.

VII. Conclusion

Having found that the parent is entitled to funding from the district for the contracted amount for transportation services for the student for the 2024-25 school year, the necessary inquiry is at an end.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED, that the IHO's decision, dated September 17, 2024, is modified to direct the district to fund the costs of the transportation services provided by Sisters Travel at the contracted rate for the 2024-25 school year.

Dated: **Albany, New York**
January 24, 2025

SARAH L. HARRINGTON
STATE REVIEW OFFICER