The University of the State of New York

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

No. 24-620

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:
The Law Office of Philippe Gerschel, attorneys for petitioner, by Philippe Gerschel, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Abigail Hoglund-Shen, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request that the district fund her son's private special education services delivered by Yeled v'Yalda (Yeled) for the 2023-24 school year. The district cross-appeals from that portion of the IHO's decision which denied its motion to dismiss the parent's claims for lack of subject matter jurisdiction. The appeal must be sustained in part. The cross-appeal must be dismissed, and the matter remanded to the IHO for further proceedings.

II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to the same committee that designs educational programing for students with disabilities under the IDEA (20 U.S.C. §§ 1400-1482), namely 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, State law provides that "[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-c[2][b][1]). Incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

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

III. Facts and Procedural History

The parties' familiarity with this matter is presumed and, given the disposition of this matter, the facts and procedural history of the case will not be recited in detail.

Briefly, a CSE convened on May 30, 2023, to develop an IESP for the student with an implementation date of September 5, 2023 (Parent Ex. B at pp. 1, 7, 10). The May 2023 CSE found the student eligible for special education and related services as a student with a speech or language impairment (id. at p. 1).[1] The May 2023 CSE recommended that the student receive five periods per week of direct group special education teacher support services (SETSS) in a separate location, two 30-minute sessions per week of group speech-language therapy in a separate location, and two 30-minute sessions per week of group occupational therapy (OT) in a separate location (id. at p. 7).[2]

The parent electronically signed a district form requesting equitable services for the 2023-24 school year on May 31, 2023 (Parent Ex. D at p. 2).

On August 2, 2023, the parent electronically signed a contract with Yeled for the provision of special education and/or related services from September 1, 2023 through June 30, 2024 (Parent Ex. E at p. 1). The contract provided that the parent was responsible for payment of special education services at a rate of $198 per hour and related services at a rate of $250 per hour (id.).

By letter dated September 3, 2023, the parent, through her attorneys, provided the district with written notice that she consented to all of the recommended services but had no way of implementing the services (Parent Ex. C at p. 1). The parent then notified the district of her intention to "implement the IESP" due to her inability to locate providers willing to accept the district's standard rate (id.). The parent further advised the district of her intention to seek reimbursement or direct payment from the district for her unilaterally obtained services (id.).

Regarding services delivered to the student during the 2023-24 school year, the hearing record included a June 19, 2024 special education progress report, a September, 23, 2024 affidavit from the program director of special education services at Yeled, and a July 29, 2024 affidavit from the educational supervisor from Yeled (Parent Exs. G at pp. 1-11; I at pp. 1-2; J at pp. 1-4).

A. Due Process Complaint Notice

In a due process complaint notice dated July 12, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year (Parent Ex. A at pp. 2, 3). The parent requested that the student receive the services set forth in the May 2023 IESP as pendency (id. at p. 2). The parent further asserted that the district failed to implement the May 2023 IESP and that the parent had been unable to locate providers on her own (id.). The

[1] The student's eligibility for special education as a student with a speech or language impairment is not in dispute (see 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

[2] SETSS is not defined in the State continuum of special education services (see 8 NYCRR 200.6). As has been laid out in prior administrative proceedings, the term is not used anywhere other than within this school district and a static and reliable definition of "SETSS" does not exist within the district.

parent contended that "[w]ithout support, the parental mainstream placement [wa]s untenable, and the failure to either implement the services or provide a placement [wa]s a denial of a FAPE for the 2023-24 school year" (id.).

As relief, the parent reserved her "right to ask for compensatory SETSS and related services" for any services not provided during the 2023-24 school year (Parent Ex. A at p. 3). In addition, the parent requested an order directing the district to fund the providers located by the parent for the 2023-24 school year at the provider's contracted for rate (id.). The parent also requested an order directing the district to "fund a bank of compensatory periods of SETSS and related services for the entire 2023-24 school year —or the parts of which were not serviced" (id.).

B. Motion to Dismiss, Impartial Hearing and Impartial Hearing Officer Decision

By written motion to dismiss dated October 18, 2024, the district asserted that the IHO lacked subject matter jurisdiction to review the parent's claims set forth in her due process complaint notice, and that the parent had failed to request equitable services for the 2023-24 school year by filing a notice on or before June 1, 2023 (IHO Ex. III at pp. 2-6). An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on November 1, 2024 (Tr. pp. 1-33). Initially, the IHO stated that he was denying the district's motion to dismiss for lack of subject matter jurisdiction and that he would discuss the issue in his decision (Tr. p. 5). The IHO further stated that the district had raised the June 1 defense in its motion; however, he would hold his decision in abeyance and address it in his decision, since neither party had yet had the opportunity to offer evidence into the hearing record (id.).

In a decision dated November 8, 2024, the IHO found that the evidence established that the parent failed to timely file a June 1 notice and he dismissed the parent's due process complaint notice with prejudice (IHO Decision at pp. 3, 4, 5-6). The IHO did not credit the parent's testimony and did not accept her claim that she submitted a timely June 1 letter (id. at p. 6). With regard to the parent's documentary evidence, the IHO found that the parent's exhibits failed "to show any indication that a June 1 letter was actually sent" (id.). The IHO determined that there was "no evidence of a timely, sufficient request for equitable services" and that "[i]t [wa]s undisputed that [the p]arent failed to file their request on time, which [wa]s a condition precedent to [the district]'s obligation to provide equitable services for [the s]tudent for the 2023-2024 school year" (id.). In accordance with his findings, the IHO dismissed the parent's due process complaint notice with prejudice (id.).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO misconstrued the June 1 provision. The parent argues that the operative IESP was developed on May 30, 2023, and that it would be extraordinarily harsh to convene a meeting and require a parent to submit a notice within two days of the CSE meeting. The parent further contends that she did not have a copy of the IESP until after June 1, 2023, and that she submitted a Notice of Residence before knowing what services were recommended in the IESP. The parent argues that the IHO incorrectly attributed the burden of proof to the parent to prove that a June 1 notice was sent and further contends that she provided evidence of the required notice, including a copy of the notice, testimony as to how the notice was sent, and screen shots corroborating the testimony. In contrast, the parent asserts that the district

did not adequately raise any affirmative defenses and did not present any evidence such as the student's Special Education Student Information System (SESIS) log to show that the parent did not make send a request for services. In addition, the parent contends that the district should be estopped from raising the June 1 affirmative defense and that the facts in this matter meet the criteria for equitable estoppel.

The parent also argues that a June 1 letter was timely submitted, and the hearing record included detailed evidence of the assistance provided to parents by Yeled in submitting the June 1 letter to the district. The parent further asserts that even if she did not submit a June 1 letter, dismissal of her due process complaint notice was not appropriate. Lastly, the parent contends that the student received a program specifically tailored to address the student's needs from Yeled, and that equitable considerations warranted an award of full funding for the parent's unilaterally obtained services. As relief, the parent requested direct funding for SETSS at a rate of $198 per hour.

In an answer and cross-appeal, the district asserts that the IHO correctly dismissed the parent's due process complaint notice because the parent failed to request equitable services by June 1, 2023. According to the district, the hearing record indicates that the service provider requested equitable services from the district and there was no evidence that the parent authorized the service provider to make the request on her behalf. The district also argues that the parent abandoned her requests for pendency, speech-language therapy, and OT, that the parent did not demonstrate the appropriateness of her unilaterally obtained services, and that equitable considerations did not favor an award granting the parent's requested relief. The district also cross-appeals from the IHO's denial of its motion to dismiss for lack of subject matter jurisdiction.

In an answer to the district's answer and cross-appeal, the parent contends that pendency cannot be abandoned, that the IHO's determination that the parent failed to timely request equitable services must be reversed, that the parent's contract with Yeled is a valid contract, and that the IHO has subject matter jurisdiction to review the parent's claims.

In a reply to the parent's answer to the district's answer and cross-appeal, the district alleges that the parent's answer to the cross-appeal does not comply with the practice regulations and should be rejected.[3]

V. Applicable Standards

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A]; Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools

[3] While the parent submitted a notarized verification of the request for review, the answer to the cross-appeal did not include a notarized verification. Instead, the parent submitted a document titled "Affirmation of Truth" in which the parent affirmed, under penalty of perjury, that the contents of the answer were true to her knowledge. Having considered the arguments presented by the parties' and the circumstances presented, outright dismissal of the parent's answer to the cross-appeal is not warranted and the arguments contained therein are considered as part of this matter.

(see 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (see 34 CFR 300.134, 300.137[a], [c], 300.138[b]).

However, under State law, parents of a student with a disability who have privately enrolled their child in a nonpublic school may seek to obtain educational "services" for their child by filing a request for such services in the public school district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).[4] "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (id.).[5] Thus, under State law an eligible New York State resident student may be voluntarily enrolled by a parent in a nonpublic school, but at the same time the student is also enrolled in the public school district, that is dually enrolled, for the purpose of receiving special education programming under Education Law § 3602-c, dual enrollment services for which a public school district may be held accountable through an impartial hearing.

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. v. New York City Dep't of Educ., 694 F.3d 167, 184-85 [2d Cir. 2012]).

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[4] State law provides that "services" includes "education for students with disabilities," which means "special educational programs designed to serve persons who meet the definition of children with disabilities set forth in [Education Law § 4401(1)]" (Educ. Law § 3602-c[1][a], [d]).

[5] State guidance explains that providing services on an "equitable basis" means that "special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district" ("Chapter 378 of the Laws of 2007–Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," Attachment 1 (Questions and Answers), VESID Mem. [Sept. 2007], available at https://www.nysed.gov/special-education/guidance-parentally-placed-nonpublic-elementary-and-secondary-school-students). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (id.). The guidance has recently been reorganized on the State's web site and the paginated pdf versions of the documents previously available do not currently appear there, having been updated with web based versions.

VI. Discussion

A. Preliminary Matters

1. Subject Matter Jurisdiction

In its cross-appeal, the district asserts that parents have no right to due process for equitable service claims and that the IHO erred in failing to dismiss the parent's due process complaint notice for lack of subject matter jurisdiction. The district also argues that there is no federal right to file a due process claim regarding services recommended in an IESP, and further that Education Law § 3602-c does not provide parents with the ability to file due process complaint notices for implementation of equitable service claims or disputes regarding enhanced rates. The district also contends that Education Law § 4404 does not confer jurisdiction to IHOs to consider enhanced rate claims from parents seeking implementation of equitable services. The district further alleges that the parent can obtain the relief that she is seeking through the district's Enhanced Rate Equitable Service (ERES) unit.

Recently in several decisions, the undersigned and other SROs have rejected the district's position that IHOs and SROs lack subject matter jurisdiction to address claims related to implementation of equitable services under State law (see, e.g., Application of a Student with a Disability, Appeal No. 25-067; Application of a Student with a Disability, Appeal No. 24-615; Application of a Student with a Disability, Appeal No. 24-614; Application of a Student with a Disability, Appeal No. 24-612; Application of a Student with a Disability, Appeal No. 24-602; Application of a Student with a Disability, Appeal No. 24-595; Application of a Student with a Disability, Appeal No. 24-594; Application of a Student with a Disability, Appeal No. 24-589; Application of a Student with a Disability, Appeal No. 24-584; Application of a Student with a Disability, Appeal No. 24-572; Application of a Student with a Disability, Appeal No. 24-564; Application of a Student with a Disability, Appeal No. 24-558; Application of a Student with a Disability, Appeal No. 24-547; Application of a Student with a Disability, Appeal No. 24-528; Application of a Student with a Disability, Appeal No. 24-525; Application of a Student with a Disability, Appeal No. 24-512 Application of a Student with a Disability, Appeal No. 24-507; Application of a Student with a Disability, Appeal No. 24-501; Application of a Student with a Disability, Appeal No. 24-498; Application of a Student with a Disability, Appeal No. 24-464; Application of a Student with a Disability, Appeal No. 24-461; Application of a Student with a Disability, Appeal No. 24-460; Application of a Student with a Disability, Appeal No. 24-441; Application of a Student with a Disability, Appeal No. 24-436; Application of the Dep't of Educ., Appeal No. 24-435; Application of a Student with a Disability, Appeal No. 24-392; Application of a Student with a Disability, Appeal No. 24-391; Application of a Student with a Disability, Appeal No. 24-390; Application of a Student with a Disability, Appeal No. 24-388; Application of a Student with a Disability, Appeal No. 24-386).

Under federal law, all districts are required by the IDEA to participate in a consultation process with nonpublic schools located within the district and develop a services plan for the provision of special education and related services to students who are enrolled privately by their parents in nonpublic schools within the district equal to a proportionate amount of the district's federal funds made available under part B of the IDEA (20 U.S.C. § 1412[a][10][A]; 34 CFR 300.132[b], 300.134, 300.138[b]). However, the services plan provisions under federal law clarify

that "[n]o parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school" (34 CFR 300.137 [a]). Additionally, the due process procedures, other than child find, are not applicable for complaints related to a services plan developed pursuant to federal law.

Accordingly, the parent would not have a right to due process under federal law; however, the student did not merely have a services plan developed pursuant to federal law, and the parent did not argue that the district failed in the federal consultation process or in the development of a services plan pursuant to federal regulations.

Separate from the services plan envisioned under the IDEA, the Education Law in New York has afforded parents of resident students with disabilities with a State law option that requires a district of location to review a parental request for dual enrollment services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]).[6]

Education Law § 3602-c, concerning students who attend nonpublic schools, provides that "[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of section forty-four hundred four of this chapter" (Educ. Law § 3602-c[2][b][1]). It further provides that "[d]ue process complaints relating to compliance of the school district of location with child find requirements, including evaluation requirements, may be brought by the parent or person in parental relation of the student pursuant to section forty-four hundred four of this chapter" (Educ. Law § 3602-c[2][c]).

However, the district asserts that neither Education Law § 3602-c nor Education Law § 4404 confer IHOs with jurisdiction to consider enhanced rates claims from parents seeking implementation of equitable services.

Consistent with the IDEA, Education Law § 4404, which concerns appeal procedures for students with disabilities, provides that a due process complaint may be presented with respect to "any matter relating to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student" (Educ. Law §4404[1][a]; see 20 U.S.C. § 1415[b][6]). State Review Officers have in the past, taking into account the legislative history of Education Law § 3602-c, concluded that the legislature did not intend to eliminate a parent's ability to challenge the district's implementation of equitable services under Education Law § 3602-c through the due process procedures set forth in Education Law § 4404 (see Application of a Student with a Disability, Appeal No. 23-121; Application of the Dep't of Educ., Appeal No. 23-069; Application of a Student with a Disability, Appeal No. 23-068).[7] In addition, the New York Court of Appeals has explained that students authorized to receive services pursuant to Education Law § 3602-c are considered part-time public school students under State Law (Bd.

[6] This provision is separate and distinct from the State's adoption of statutory language effectuating the federal requirement that the district of location "expend a proportionate amount of its federal funds made available under part B of the individuals with disabilities education act for the provision of services to students with disabilities attending such nonpublic schools" (Educ. Law § 3602-c[2-a]).

[7] The district did not seek judicial review of these decisions.

of Educ. of Monroe-Woodbury Cent. Sch. Dist. v. Wieder, 72 N.Y.2d 174, 184 [1988]; see also L. Off. of Philippe J. Gerschel v. New York City Dep't of Educ., 2025 WL 466973, at *4-*6 [S.D.N.Y. Feb. 1, 2025]), which further supports the conclusion that part-time public school students are entitled to the same legal protections found in the due process procedures set forth in Education Law § 4404.However, the number of due process cases involving the dual enrollment statute statewide, which were minuscule in number until only a handful of years ago, have now increased to tens of thousands of due process proceedings per year within certain regions of this school district in the last several years. Public agencies are attempting to grapple with how to address this colossal change in circumstances, which is a matter of great significance in terms of State policy. Policy makers have recently attempted to address the issue.

In May 2024, the State Education Department proposed amendments to 8 NYCRR 200.5 "to clarify that parents of students who are parentally placed in nonpublic schools do not have the right under Education Law § 3602-c to file a due process complaint regarding the implementation of services recommended on an IESP" (see "Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings," SED Mem. [May 2024], available at https://www.regents.nysed.gov/sites/regents/files/524p12d2revised.pdf).[8] Ultimately, however, the proposed regulation was not adopted. Instead, in July 2024, the Board of Regents adopted, by emergency rulemaking, an amendment of 8 NYCRR 200.5, which provides that a parent may not file a due process complaint notice in a dispute "over whether a rate charged by a licensed provider is consistent with the program in a student's IESP or aligned with the current market rate for such services" (8 NYCRR 200.5[i][1]). The amendment to the regulation does not apply to the present circumstance for two reasons. First, the amendment to the regulation applies only to due process complaint notices filed on or after July 16, 2024 (id.).[9] Second, since its adoption, the amendment has been enjoined and suspended in an Order to Show Cause signed October 4, 2024 (Agudath Israel of America v. New York State Bd. of Regents, No. 909589-24 [Sup. Ct., Albany County, Oct. 4, 2024]). Specifically, the Order provides that

> pending the hearing and determination of Petitioners' application for a preliminary injunction, the Revised Regulation is hereby stayed and suspended, and Respondents, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, are temporarily enjoined and restrained

[8] In this case, the district continues to press the point that the parent has no right to file any kind of implementation claim regarding dual enrollment services, regardless of whether there are allegations about rates, which is more in alignment with the text of the proposed rule in May 2024, which was not the rule adopted by the Board of Regents.

[9] A statutory or regulatory amendment is generally presumed to have prospective application unless there is clear language indicating retroactive intent (see Ratha v. Rubicon Res., LLC, 111 F.4th 946, 963 [9th Cir. 2024]). The presence of a future effective date typically suggests that the amendment is intended to apply prospectively, not retroactively (People v. Galindo, 38 N.Y.3d 199, 203 [2022]). The due process complaint in this matter was filed with the district on July 12, 2024 (Parent Ex. A at pp. 1, 6), prior to the July 16, 2024 date set forth in the emergency regulation. Since then, the emergency regulation has lapsed.

> from taking any steps to (a) implement the Revised Regulation, or (b) enforce it as against any person or entity

(Order to Show Cause, O'Connor, J.S.C., Agudath Israel of America, No. 909589-24).[10]

Consistent with the district's position that there is not and has never been a right to bring a due process complaint for implementation of IESP claims or enhanced rate for services, State guidance issued in August 2024 noted that the State Education Department had previously "conveyed" to the district that:

> parents have never had the right to file a due process complaint to request an enhanced rate for equitable services or dispute whether a rate charged by a licensed provider is consistent with the program in a student's IESP or aligned with the current market rate for such services. Therefore, such claims should be dismissed on jurisdictional grounds, whether they were filed before or after the date of the regulatory amendment.

("Special Education Due Process Hearings—Rate Disputes," Office of Special Educ. [Aug. 2024]).[11]

However, acknowledging that the question has publicly received new attention from State policymakers, as well as at least one court at this juncture and appears to be an evolving situation, given the implementation date set forth in the text of the amendment to the regulation and the issuance of the temporary restraining order suspending application of the regulatory amendment, the amendments to the regulation may not be deemed to apply to the present matter. Further, the position set forth in the guidance document issued in the wake of the emergency regulation, which is now enjoined and suspended, does not convince me that the Education Law may be read to divest IHOs and SROs of jurisdiction over these types of disputes.

Finally, the district's assertion that the parent can obtain her requested relief through the ERES unit does not weigh on the issue of jurisdiction. While a local educational agency may set up additional options for a parent to pursue relief, it may not require procedural hurdles not

[10] On November 1, 2024, the Supreme Court, Albany County, issued a second order clarifying that the temporary restraining order applied to both emergency actions and activities involving permanent adoption of the rule until the petition was decided (Order, O'Connor, J.S.C., Agudath Israel of America, No. 909589-24 [Sup. Ct., Albany County, Nov. 1, 2024]).

[11] Neither the guidance nor the district indicated if this jurisdictional viewpoint was conveyed publicly or only privately to the district, when it was communicated, or to whom. There was no public expression of these points that the undersigned was aware of until policymakers began rulemaking activities in May 2024; however, as the number of allegations began to mount that the district's CSEs had not been convening and services were not being delivered, at that point the district began to respond by making unsuccessful jurisdictional arguments to SROs in the past, which decisions were subject to judicial review but went unchallenged (see e.g., Application of a Student with a Disability, Appeal No. 23-069; Application of a Student with a Disability, Appeal No. 23-068; Application of a Student with a Disability, Appeal No. 23-121). The guidance document is no longer available on the State's website; thus, a copy of the August 2024 rate dispute guidance has been added to the administrative hearing record..

contemplated by the IDEA or the Education Law (see Antkowiak v. Ambach, 838 F.2d 635, 641 [2d Cir. 1988] ["While state procedures which more stringently protect the rights of the handicapped and their parents are consistent with the [IDEA] and thus enforceable, those that merely add additional steps not contemplated in the scheme of the Act are not enforceable."]; see also Montalvan v. Banks, 707 F. Supp. 3d 417, 437 [S.D.N.Y. 2023]).

Based on the foregoing, the IHO correctly denied the district's motion to dismiss for lack of subject matter jurisdiction.

2. June 1 Deadline

In finding that the evidence established that the parent failed to timely file a June 1 notice, the IHO first noted that the parent's direct testimony, offered in an affidavit, was excluded from the hearing record because the parent was unable to swear to its contents and did not author it (IHO Decision at p. 3 n.4). The IHO then explained that he considered the parent a district witness because she was subpoenaed to testify in person by the district (id.). The IHO determined that the parent failed to provide timely notice requesting equitable services by June 1, 2023 (id. at p. 5). The IHO found that although the parent presented a document that appeared to be a letter electronically signed by the parent on May 31, 2023, which requested equitable services for the 2023-24 school year, the document did not include "proof of receipt or confirmation of how, when, or if it was successfully transmitted" (id.; see Parent Ex. D).

The IHO also noted that the parent " admitted she had no personal knowledge of how or by whom the June 1 letter was submitted" and that "when asked to verify an unsigned, undated affidavit (submitted as Parent's Exhibit L), [the p]arent admitted she neither reviewed nor authored it and had no knowledge of its origin" (IHO Decision at pp. 5-6). Based on that testimony, the IHO found that the parent lacked credibility, and the IHO did not accept her claim that she submitted a timely June 1 letter (id. at p. 6). With regard to the parent's documentary evidence labeled "Proof of June 1 Submission," the IHO found that the document failed "to show any indication that a June 1 letter was actually sent" (id.; Parent Ex. K). The IHO explained that the exhibit was a two-page document that did not contain the student's name on either page and did not "display[] the contents of the purported June 1 letter" (IHO Decision at p. 6). The IHO further described the exhibit as "a screenshot of a folder titled "CSE 8," nested within another folder labeled 'June 1 Letters'" and that "[n]o witness testified to explain the custodian of these folders or their contents" (id.). The IHO described the second page as "a list of .pdf files with no further description or indication of their relevance to any June 1 letter sent on [the s]tudent's behalf" (id.). The IHO found that the parent's exhibits did not offer "convincing evidence that [the p]arent's June 1 request letter was ever sent" (id.). Thus, the IHO determined that there was "no evidence of a timely, sufficient request for equitable services" and that "[i]t [wa]s undisputed that [the p]arent failed to file their request on time, which [wa]s a condition precedent to [the district]'s obligation to provide equitable services for [the s]tudent for the 2023-2024 school year" (id.). In accordance with his findings, the IHO dismissed the parent's due process complaint notice with prejudice (id.).

The parent asserts that the IHO erred and argues that a June 1 letter was timely submitted. In addition, the parent contends that the hearing record included detailed evidence of the assistance provided to parents by Yeled. The parent further asserts that even if she did not submit a June 1 letter, dismissal of her due process complaint notice was not appropriate.

The State's dual enrollment statute requires parents of a New York State resident student with a disability who is parentally placed in a nonpublic school and for whom the parents seek to obtain educational services to file a request for such services in the district where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]). With respect to a parent's awareness of the requirement, the Commissioner of Education has previously determined that a parent's lack of awareness of the June 1 statutory deadline does not invalidate the parent's obligation to submit a request for dual enrollment by the June 1 deadline (Appeal of Austin, 44 Ed. Dep't Rep. 352, Decision No. 15,195, available at https://www.counsel.nysed.gov/ Decisions/volume44/d15195; Appeal of Beauman, 43 Ed Dep't Rep 212, Decision No. 14,974 available at https://www.counsel.nysed.gov/Decisions/volume43/d14974). Specifically, the Commissioner stated that Education Law § "3602-c(2) does not require [the district] to post a notice of the deadline" and that a parent being "unaware of the deadline does not provide a legal basis" for the waiver of the statutory deadline for dual enrollment applications (Appeal of Austin, 44 Ed. Dep't Rep. 352).

The issue of the June 1 deadline fits with other affirmative defenses, such as the defense of the statute of limitations, which are required to be raised at the initial hearing (see M.G. v. New York City Dep't of Educ., 15 F. Supp. 3d 296, 304, 306 [S.D.N.Y. 2014] [holding that the limitations defense is "subject to the doctrine of waiver if not raised at the initial administrative hearing" and that where a district does "not raise the statute of limitations at the initial due process hearing, the argument has been waived"]; see also R.B. v. Dep't of Educ. of the City of New York, 2011 WL 4375694, at *4-*6 [S.D.N.Y. Sept. 16, 2011] [noting that the IDEA "requir[es] parties to raise all issues at the lowest administrative level" and holding that a district had not waived the limitations defense by failing to raise it in a response to the due process complaint notice where the district articulated its position prior to the impartial hearing]; Vultaggio v. Bd. of Educ., Smithtown Cent. Sch. Dist., 216 F. Supp. 2d 96, 103 [E.D.N.Y. 2002] [noting that "any argument that could be raised in an administrative setting, should be raised in that setting"]). "By requiring parties to raise all issues at the lowest administrative level, IDEA 'affords full exploration of technical educational issues, furthers development of a complete factual record and promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children.'" (R.B. v. Dep't of Educ. of the City of New York, 2011 WL 4375694, at *6 [S.D.N.Y. Sept. 16, 2011], quoting Hope v. Cortines, 872 F. Supp. 14, 19 [E.D.N.Y. 1995] and Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1303 [9th Cir. 1992]; see C.D. v. Bedford Cent. Sch. Dist., 2011 WL 4914722, at *12 [S.D.N.Y. Sept. 22, 2011]).

The Yeled program director testified that, as part of her role, she worked with parents and schools to support the development of appropriate programming and services, which included helping to support families who intended to request special education services by June 1, 2023 for the 2023-24 school year (Parent Ex. I ¶ 6). The program director averred that to ensure that letters requesting equitable services were timely filed, Yeled provided families an adobe version of the district's form letter for requesting equitable services (id. ¶ 7). According to the program director, parents were then able to sign the adobe document, which was automatically returned via email to Yeled (id.). The program director further testified that on June 1, 2023, Yeled provided an email link to each CSE for the students the agency received signed forms back from (id. ¶ 8). The program director also testified that she was specifically familiar with the letter signed by the student's mother on May 31, 2023, and she stated that the letter was signed by the parent and

returned to Yeled through adobe (id. ¶ 9). Additionally, the program director testified that the parent's form was included in the link sent by Yeled to CSE 8 (id. ¶ 10).

In an email dated October 18, 2024, the district's attorney advised the IHO and the parent's attorney of her intention to cross-examine the program director, the educational supervisor at Yeled, and the director of fiscal special services at Yeled (IHO Ex. II; see Tr. p. 16; Parent Exs. H ¶ 2; I ¶ 4; J ¶ 4). The district also subpoenaed the parent to appear as a witness (IHO Ex. IV).

The parent testified that she did not recall how the June 1 notice was sent to the district (Tr. p. 11). The parent's attorney did not question her (Tr. p. 14). The parent's only witness who appeared for cross-examination was the director of fiscal special services (Tr. pp. 15-18). Following her testimony, the parent was recalled as a witness to affirm the content of her affidavit, and after questioning by the IHO, she was unable to do so (Tr. pp. 18-21). The district's attorney requested that the parent's affidavit be excluded from evidence, after which the parent's attorney did not object (Tr. p. 21). After the parent's affidavit was excluded from the hearing record and the parent was dismissed as a witness, the district's attorney informed the IHO that she did not have any questions for the remaining witnesses in this matter (Tr. p. 22). The district's attorney was also given the opportunity to call rebuttal witnesses but declined to do so (id.).

As noted above, the IHO found the parent's testimony not credible (IHO Decision at p. 6). Generally, an SRO gives due deference to the credibility findings of an IHO, unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; P.G. v. City Sch. Dist. of New York, 2015 WL 787008, at *16 [S.D.N.Y. Feb. 25, 2015]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012], aff'd, 725 F.3d 131 [2d Cir. 2013]; Bd. of Educ. of Hicksville Union Free Sch. Dist. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 12-076).

In this matter, even after dismissing the parent's testimony, the hearing record includes evidence, from the agency program director, that weighs towards finding that a letter requesting equitable services was sent to the district on the parent's behalf prior to June 1, 2023 (see Parent Ex. I ¶¶6-10). Additionally, review of the IHO's decision reveals that he did not consider the affidavit testimony of the program director (IHO Decision at pp. 3-6). The program director's explanation of the assistance provided to parents in submitting the June 1 letter, her specific memory of receiving the parent's signed letter and transmission of the signed letter to CSE 8 on behalf of the parent was unrefuted by the district. Additionally, on appeal, the district does not assert that a letter was not sent and instead asserts that "the service provider—not the [p]arent herself—requested the equitable services" contending that the hearing record lacked evidence that the parent authorized the service provider to submit the June 1 letter on her behalf (Answer with Cross-Appeal at ¶15). However, the hearing record included a May 31, 2023 letter signed by the parent, as well as testimony by the Yeled program director as to how that letter was received from the parent and sent to the district by the agency (Parent Exs. D; I ¶¶9, 10). Further, although the parent did not remember the circumstances of the submission of the June 1 letter, she was not questioned about her signature on the May 31, 2023 request for equitable services nor was she asked if she intended to request equitable services for the 2023-24 school year (Tr. pp. 11-13, 18-21; see Parent Ex. D at p. 2). Thus, considering the entirety of the evidence in the hearing record,

the IHO erred in determining that there was insufficient evidence to meet the parent's burden of proving that she submitted a written request to the district for equitable services by the June 1, 2023 deadline.

B. Pendency

In her response to the district's answer and cross-appeal, the parent reasserts her request for pendency. The parent alleged in her July 12, 2024 due process complaint notice that the student was entitled to the services recommended in the May 30, 2023 IESP as pendency (Parent Ex. A at p. 2). The IHO did not address the student's pendency request.

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]).[12] 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 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. 46,709 [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).

[12] 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).

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).

The May 2023 CSE recommended that the student receive five periods per week of direct group SETSS, two 30-minute sessions per week of group speech-language therapy and two 30-minute sessions per week of group OT (Parent Ex. B at p. 7). In its answer and cross-appeal, the district argues that the parent failed to raise pendency during the hearing and in the request for review and therefore has abandoned any request for pendency. In the alternative, the district argues that the IHO's failure to award pendency services in his decision is final and binding.

As indicated above, the parent invoked pendency in her July 12, 2024 due process complaint notice and attached a pendency implementation form to the due process complaint notice, which was not addressed by the IHO.

Here, the parent did not abandon her pendency claim (see Application of a Student with a Disability, Appeal No. 24-548; Application of the Bd. of Educ., Appeal No. 17-097; Application of the Dep't of Educ., Appeal No. 09-071 [concluding that the parents had not '"abandoned' their claim for pendency when they did not continue to raise the issue at hearing dates subsequent to the filing of their brief on the issue"]. It is well-settled that a student's entitlement to pendency arises automatically, begins on the date of the filing of the due process complaint notice, and continues until the conclusion of the matter (20 U.S.C. § 1415[j]; 34 CFR 300.518[a]; 8 NYCRR 200.5[m]; Zvi D., 694 F.2d 904, 906). In any event, the district argued in its answer and cross-appeal that the parent abandoned her request for pendency, the district did not dispute that the last agreed upon program was the May 2023 IESP. Accordingly, based on the information available in the hearing

record before me, the district should have been implementing the education program set forth in the May 2023 IESP from the filing of the due process complaint notice in this matter, as pendency has the effect of an automatic injunction (see M.R. v. Ridley Sch. Dist., 744 F. 3d 112, 123 [3d Cir. 2014] [finding "it pointless to insists on a formal demand for interim tuition reimbursement when there is no viable response to that demand"]). Pendency is an automatic injunction, there is no requirement to have the district sign a pendency agreement or any mandate that an IHO hold an evidentiary hearing because the district is already liable under the statute, especially in cases such as this one which failed to identify a genuine dispute.

Therefore, unless there has been, or is, a subsequent change in the student's educational placement following what was available in the hearing record before me, the district is directed to provide the student with five periods per week of direct group SETSS, two 30-minute sessions per week of group speech-language therapy, and two 30-minute sessions per week of group OT from July 12, 2024 through the conclusion of the current proceedings.

C. Remand

As discussed above, the IHO erred in finding that the parent failed to request equitable services for the 2023-24 school year. The district conceded that it failed to implement the services recommended in the May 2023 IESP and, as a result, the district failed to offer the student a FAPE for the 2023-24 school year (Tr. pp. 14-15). The next issue to be discussed is whether the parent's unilaterally obtained services from Yeled were appropriate for the student for the 2023-24 school year. As the IHO determined that the parent did not request equitable services for the 2023-24 school year, he declined to address the appropriateness of parent's unilaterally obtained services (IHO Decision at pp. 4-6). When an IHO has not addressed claims set forth in a due process complaint notice, an SRO may consider whether the case should be remanded to the IHO for a determination of the claims that the IHO did not address (8 NYCRR 279.10[c]; see Educ. Law § 4404[2]; F.B. v. New York City Dep't of Educ., 923 F. Supp. 2d 570, 589 [S.D.N.Y. 2013] [indicating that the SRO may remand matters to the IHO to address claims set forth in the due process complaint notice that were unaddressed by the IHO], citing J.F. v. New York City Dep't of Educ., 2012 WL 5984915, at *9 n.4 [S.D.N.Y. Nov. 27, 2012]; see also D.N. v. New York City Dep't of Educ., 2013 WL 245780, at *3 [S.D.N.Y. Jan. 22, 2013]). Here, as the IHO has not yet ruled on whether the parent met her burden of proving that the services the parent unilaterally obtained for the student for the 2023-24 school year were appropriate or whether equitable considerations support the parent's request for relief, I will remand the matter to the IHO to address these issues in the first instance.

The IHO upon remand should ensure that an adequate record is developed upon which to base the necessary findings of fact and of law relative to the parent's requested relief. I will leave it to the IHO's sound discretion regarding adequate development of the hearing record on those topics and whether to provide the parent an opportunity to present additional evidence regarding the services provided by Yeled as well as the student's programming and progress at the nonpublic school and a concomitant opportunity for the district to respond. Additionally, the IHO may find it appropriate to schedule a prehearing conference with the parties to, among other things, simplify and clarify the issues left to be resolved at the hearing (see 8 NYCRR 200.5[j][3][xi][a]).

VII. Conclusion

In summary, review of the hearing record does not support the IHO's determination that the parent failed to timely request equitable services for the student for the 2023-24 school year. In addition, the hearing record supports a finding that the district failed to implement the services recommended on the May 2023 IESP and that the student was not offered a FAPE for the 2023-24 school year. As the IHO did not address the appropriateness of the parent's unilaterally obtained services or equitable considerations, this matter is remanded to the IHO to make determinations on these issues. In addition, the student is entitled to pendency services as set forth in the May 2023 IESP during the pendency of this proceeding.

I have considered the remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

THE CROSS-APPEAL IS DISMISSED.

IT IS ORDERED that the IHO's decision, dated November 8, 2024, is modified by reversing that portion which found that the parent failed to timely request equitable services for the student for the 2023-24 school year; and

IT IS FURTHER ORDERED that the district shall provide the student with five periods per week of direct group SETSS, two 30-minute sessions per week of group speech-language therapy, and two 30-minute sessions per week of group OT from July 12, 2024 through the conclusion of the current proceedings or until there is a change in the student's educational placement; and

IT IS FURTHER ORDERED that the matter is remanded to the IHO to determine whether the services unilaterally obtained by the parent were appropriate for the student for the 2023-24 school year and whether equitable considerations weigh in favor of granting funding for the parent's unilaterally obtained services.

Dated: **Albany, New York**
May 14, 2025

STEVEN KROLAK
STATE REVIEW OFFICER