



# **The University of the State of New York**

## **The State Education Department**

**State Review Officer**

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**No. 25-038**

**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:**

Gulkowitz Berger LLP, attorneys for petitioner, by Shaya M. Berger, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Cynthia Sheps, 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 respondent (the district) fund the costs of her son's private services delivered by LAR Learning LLC (LAR Learning) for the 2022-23 and 2023-24 school years. The appeal must be sustained, 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 programming 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**

Given the limited issues on appeal, a full recitation of the student's educational history is not necessary. Briefly, on June 22, 2021, the CSE convened, found the student eligible for special

education services as a student with a learning disability, and developed an IESP for the student with an implementation date of September 13, 2021 (see generally Parent Ex. B).<sup>1</sup> The June 2021 CSE recommended that the student receive eight periods per week of direct group special education teacher support services (SETSS) together with two 45-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of individual occupational therapy (OT), and two 30-minute sessions per week of individual physical therapy (PT) (Parent Ex. B at p. 10).<sup>2</sup> The June 2021 IESP noted that the student was parentally placed in a nonpublic school (id. at p. 12).

The parent electronically signed an agreement with LAR Learning, which indicated that the student was home schooled and identified eight sessions per week of SETSS as the student's service for the 2022-23 school year (see Parent Ex. F).<sup>3</sup> As part of the agreement, the parent represented that "an IEP/IESP was developed by the [district]," that the district had not offered any "suitable providers" in connection with the recommended program, and the parent was requesting that LAR Learning implement the program "to whatever extent possible" (Parent Ex. F at p. 1).<sup>4</sup> LAR Learning agreed to make every effort to implement the student's educational program with qualified providers (id.).

On April 26, 2023, the parent notified the district that she intended to home school the student and wanted the district to provide the student with special education services for the 2023-24 school year (Parent Ex. D).

On October 25, 2023, the parent signed another agreement with LAR Learning with many of the same terms as the prior agreement; however, the new agreement included an increase in rates for services and further indicated it was for the student's special education and related services for the 2023-24 school year (see Parent Ex. G).

### **A. Due Process Complaint Notice**

In an amended due process complaint notice dated June 17, 2024, the parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2022-23 and 2023-24 school years for the failure to implement the special education and related services

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<sup>1</sup> The student's eligibility for special education as a student with a learning disability is not in dispute (see 34 CFR 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

<sup>2</sup> 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.

<sup>3</sup> Under New York State law, a student with a disability whose parent has submitted an individualized home instruction plan (IHIP) for home schooling the student pursuant to State regulations is deemed to be a student enrolled in and attending a nonpublic school for the purpose of receiving special education services (Educ. Law § 3602-c[2-c]; 8 NYCRR 100.10).

<sup>4</sup> LAR Learning has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

mandated in the June 2021 IESP (see Parent Ex. A).<sup>5</sup> The parent alleged that the last agreed upon IESP was June 22, 2021 which mandated a program of eight sessions per week of SETSS together with related services (Parent Ex. A at p. 1). The parent asserted that the student required the same special education services and related services as in the June 2021 IESP for both the 2022-23 and 2023-24 school years (id.). Additionally, the parent stated that she was unable to locate providers for the student at the district's standard rates but was able to locate providers at rates higher than the district's standard rate (id.).

As relief, the parent requested funding by the district of eight sessions per week of SETSS at an "enhanced rate" for both the 2022-23 and 2023-24 school years (Parent Ex. A at p. 2). Also, the parent requested an award of related services either by related service authorizations or direct funding by the district at an enhanced rate for both school years (id.).

### **B. Impartial Hearing Officer Decision**

A pendency hearing was held on September 22, 2023, however, the district agreed to services on a pendency implementation form dated September 21, 2023, which provided that pendency was based on the June 2021 IESP and consisted of eight periods per week of direct group SETSS; two 45-minute sessions per week of individual speech-language therapy; two 30-minute sessions per week of individual OT; and two 30-minute sessions per week of individual PT (Tr. pp. 1-3; see Pend. Impl. Form).<sup>6</sup> After numerous appearances on October 17, 2023; November 20, 2023; December 22, 2023; January 31, 2024; March 5, 2024; April 5, 2024; May 7, 2024; June 18, 2024; July 22, 2024; August 23, 2024; September 26, 2024; and October 21, 2024 (Tr. pp. 4-64), a final hearing date took place on November 14, 2024 (Tr. pp. 65-75).

During the November 14, 2024 hearing, an advocate appeared for the parent and the district did not appear; the parent's advocate submitted the parent's documentary evidence and indicated that "[t]he parent was prepared to appear," further indicating that the parent was "prepared to come and testify . . . in terms of the homeschooling plan as well as the . . . "; at which point the IHO interjected noting "[t]he homeschooling plan [wa]s not an issue," indicating the parent was requesting SETSS for the two school years at issue (Tr. pp. 72-73). After the advocate for the parent affirmed the IHO's statement, the IHO concluded the hearing indicating the case was over (Tr. pp. 72-74).

In a decision dated December 11, 2024, the IHO found that neither the district nor the parent appeared at the hearing and that there was not "any witness with respect to the services that were purportedly provided"; therefore, the IHO denied the parent's requested relief (IHO Decision at pp. 2-3).

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<sup>5</sup> The original due process complaint notice was dated September 7, 2023 and related only to the 2022-23 school year (see Parent Ex. Q). In a response to the original due process complaint notice, the district identified the June 2021 IESP and noted the district's recommendations (see Parent C).

<sup>6</sup> On September 13, 2024, the district made a motion to dismiss the parent's due process complaint notice on the basis that the IHO lacked subject matter jurisdiction to hear the parent's implementation claims (Interim IHO Decision at p. 1). The IHO denied the district's motion to dismiss (id.).

#### **IV. Appeal for State-Level Review**

The parent appeals, alleging that the IHO erred in denying the parent's claims for funding of SETSS for the 2022-23 and 2023-24 school years. The parent argues that the IHO denied her due process by refusing to allow her live testimony because there was no direct affidavit testimony submitted by the parent. However, the parent also asserts that her testimony was not required in light of the submitted documentary evidence. Additionally, the parent argues that the unilaterally obtained services were appropriate for the student and there were no equitable considerations that warranted a reduction or denial of the requested relief. The parent requests a reversal of the IHO decision and an award of direct funding of eight periods of SETSS per week at the agency's rate for the 2022-23 and 2023-24 school years.

In an answer, the district generally denies the material allegations contained in the request for review. The district argues that the IHO properly dismissed the due process complaint notice because the parent failed to appear at the scheduled impartial hearing dates. The district also asserts that the evidence fails to demonstrate the appropriateness of the unilaterally obtained SETSS and that equitable considerations do not favor the parent's requested relief because. Ultimately, the district seeks to uphold the IHO's dismissal of the due process complaint notice.

#### **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 (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]).<sup>7</sup> "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

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<sup>7</sup> 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]).

education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (*id.*).<sup>8</sup> 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]).

## **VI. Discussion**

In this instance, the IHO's preclusion of witness testimony barred the parent from presenting her case in chief and warrants a remand for development of the hearing record and a decision on the merits.<sup>9</sup>

State regulations set forth the procedures for conducting an impartial hearing and address, in part, minimal process requirements that shall be afforded to both parties (8 NYCRR 200.5[j]). Among other process rights, each party shall have an opportunity to present evidence, compel the attendance of witnesses, and confront and question all witnesses (8 NYCRR 200.5[j][3][xii]). Furthermore, each party "shall have up to one day to present its case" (8 NYCRR 200.5[j][3][xiii]). State regulation provides that the IHO "shall exclude any evidence that he or she determines to be irrelevant, immaterial, unreliable, or unduly repetitious" and "may limit examination of a witness

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<sup>8</sup> 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.

<sup>9</sup> 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]).

by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c], [d]).

Generally, unless specifically prohibited by regulation, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, in how they conduct an impartial hearing, so long as they "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46,704 [Aug. 14, 2006] [indicating that IHOs should be granted discretion to conduct hearings in accordance with standard legal practice, so long as they do not interfere with a party's right to a timely due process hearing]). At the same time, the IHO is expected to ensure that the impartial hearing operates as an effective method for resolving disputes between the parents and district (Letter to Anonymous, 23 IDELR 1073). State and federal regulations balance the interests of having a complete hearing record with the parties having sufficient opportunity to prepare their respective cases and review evidence.

During the November 20, 2023 and September 26, 2024 status conferences, the district represented that it would not be presenting any witnesses and would not be defending its offer of a FAPE (Tr. pp. 9-10, 51).<sup>10</sup> The IHO stated that he would schedule a hearing on the merits when the parties confirmed that affidavits were "completed, signed, and notarized" to ensure that everyone was ready at the time of the hearing (Tr. pp. 10-11). Thereafter, there were several requests by the parties for extensions of the compliance date due to ongoing settlement discussions, which the IHO granted (Tr. pp. 5-6, 11-12, 15-16, 19-20, 23, 28-29). At the April 5, 2024 status conference, the parent's representative stated that she was trying to negotiate a settlement with the district, but the case may need to be heard on the merits (Tr. p. 27). The IHO asked the parent's representative if she was ready to schedule the hearing and had completed the affidavits, but the parent representative replied that she was not ready to proceed with scheduling a hearing at that time (Tr. pp. 27-28). At the next appearance, on May 7, 2024, the parent's representative stated that she had "all the documents needed" and was ready to schedule the hearing (Tr. p. 32). The IHO confirmed with the parent's representative that she was only presenting one witness and she responded in the affirmative (Tr. p. 33).

Although a hearing on the merits was scheduled for June 18, 2024, the parent's representative amended the due process complaint notice and requested another extension of the compliance date for the district to accept the amended complaint (Tr. pp. 36-37). Next, during the July 22nd status conference, the parent representative stated that the district accepted the amended due process complaint notice and she was ready for a hearing on the merits (Tr. p. 40). In response, the IHO stated that the timeline had to be restarted due to the amended due process complaint notice and that he could not schedule the hearing for another month (id.).

At the August 23, 2024 status conference, the parent's representative stated that the case was amended to include two school years and she had her documents prepared and was ready to schedule the merits hearing (Tr. p. 44). On September 26, 2024, the parties identified and the IHO admitted some parent and district exhibits into the hearing record and some exhibits were withdrawn by the parties (Tr. pp. 48-49, 51-55). After the district objected to a number of the

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<sup>10</sup> Neither the parent nor her representative appeared on November 20, 2023 (Tr. p. 8).

parent's exhibits based on there being no witness available to authenticate them, parent's counsel represented that he did not have any witnesses to present on that day but requested an extension of the compliance date to address the district's objection (Tr. pp. 55-56). The IHO granted an extension of the compliance date to give the parent "an opportunity to call a witness, whether that be for records or substantive testimony" (Tr. pp. 57-58). The hearing next convened on October 21, 2024, and at the hearing the parent's representative indicated that she was under the impression the hearing was for witness testimony but the witnesses were not available because it was a holiday (Tr. p. 61). The IHO agreed to one more extension of the compliance deadline (Tr. p. 62).

As noted above, on November 4, 2024, the parent representative appeared but the district's counsel did not appear (Tr. p. 65). The parent exhibits were again marked for identification and admitted into the hearing record (Tr. pp. 66-67, 69-72). The IHO asked if there were any witness affidavits and parent's representative stated there was no witness affidavits as the parent was prepared to testify that day as was discussed during the last hearing date (Tr. p. 72). The IHO confirmed with the parent's advocate that did not do an affidavit for the parent, indicating that an affidavit was supposed to have been submitted (*id.*). Next, the IHO reaffirmed that the case only involved eight periods per week of SETSS for the 2022-23 and 2023-24 school years and that the student received pendency for both school years (Tr. pp. 72-73). After asking the advocate for the parent if there was anything else for the record, the parent's advocate again indicated the parent was prepared to testify as to the homeschooling plan (Tr. p. 73). The IHO then stated that the homeschooling plan was not before him and the "[c]ase [wa]s over," at which point the hearing ended (Tr. pp. 73-74).

The IHO then issued his decision on December 11, 2024 in which he denied relief because neither party appeared and there were no witnesses "with respect to the services that were purportedly provided" (IHO Decision at p. 3).

Review of the transcripts shows that the IHO barred the parent from the presentation of testimony and denied her due process by not developing the hearing record. The IHO did ask the parties to submit direct affidavit testimony but did not state it was mandatory or that the failure to produce an affidavit would preclude testimony during the hearing (*see* Tr. pp. 10-11, 27-28, 72).<sup>11</sup> The IHO also seemed to agree to permit the parent to have a witness to testify about the exhibits objected to by the district and did not state that an affidavit was required to be produced for such witness (*see* Tr. pp. 56-58, 72). Furthermore, the parent was available to testify on November 4, 2024 but the IHO ended the hearing without permitting the parent's advocate to present the parent's testimony (Tr. p. 74). Although the IHO's refusal to permit the parent to testify may have been due to a belief that the parent's testimony as to the student's homeschooling program would not have been relevant to this proceeding, if the IHO had questions as to whether the services were actually delivered to the student as represented in the documentary evidence, the IHO could have had those questions answered by allowing the parent to testify.

Additionally, although the parties to an impartial hearing are obligated to comply with the reasonable directives of the IHO regarding the conduct of the impartial hearing, in this instance the IHO did not set clear directives for the failure to produce a witness affidavit and whether live

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<sup>11</sup> The IHO did not set forth any guidelines or timelines for the conduct of the hearing.



testimony would be permitted in the absence of an affidavit (see Application of a Student with a Disability, Appeal No. 14-090; Application of a Student with a Disability, Appeal No. 09-073; Application of a Child with a Disability, Appeal No. 05-026; Application of a Child with a Disability, Appeal No. 04-103; Application of a Child with a Disability, Appeal No. 04-061). Here, I find that the dismissal of the parent's due process complaint notice for the failure to provide a parent affidavit was unreasonable under the circumstances and warrants a remand for further development of the hearing record so that the parent may testify and a determination of the appropriateness of the unilaterally-obtained services and equitable considerations in the first instance.<sup>12</sup>

Accordingly, the IHO's order of dismissal must be vacated, and the matter remanded for further proceedings.

## **VII. Conclusion**

Having determined that the IHO erred by dismissing this case without a full hearing on the merits, the case is remanded to address the parent's claims as raised in her amended due process complaint notice and to determine whether she is entitled to her requested relief.

I have considered the parties remaining claims and find them to be without merit.

**THE APPEAL IS SUSTAINED.**

**IT IS ORDERED** that the IHO's decision, dated December 11, 2024, dismissing the parent's due process complaint notice is vacated; and

**IT IS FURTHER ORDERED** that this matter is remanded to the IHO for further proceedings in accordance with this decision; and

**IT IS FURTHER ORDERED** that in the event that the IHO cannot hear this matter upon remand, another IHO shall be appointed.

**Dated:**            **Albany, New York**  
                      **April 30, 2025**

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**STEVEN KROLAK**  
**STATE REVIEW OFFICER**

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<sup>12</sup> On remand, an IHO retains the authority to conduct a prehearing conference and take additional testimony if such actions are deemed necessary to create a complete record and render a proper decision (8 NYCRR 200.5[j][3][vii], [xi], [xii]; [4]; see Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; Impartial Due Process Hearing, 71 Fed. Reg. 46704 [Aug. 14, 2006]).