



The University of the State of New York

The State Education Department

State Review Officer

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No. 25-061

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 Jeremy S. Ribakove, 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. After the issuance of an adverse final decision on the merits, petitioner (the parent) appeals from an interim decision of an impartial hearing officer (IHO) determining her son's pendency placement during a due process proceeding challenging respondent's (the district's) failure to recommend an educational program for the student for the 2023-24 school year. The district cross-appeals from another interim decision of the IHO, which denied the district's motion to dismiss the parent's due process complaint notice for lack of subject matter jurisdiction. The appeal must be dismissed. The cross-appeal must be dismissed.

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

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.

According to the hearing record, the student turned five years old during the 2023-24 school year (Parent Ex. B at p. 1). On March 28, 2023, the parent was provided with a procedural safeguards notice (Dist. Ex. 2). The district conducted a social history assessment on April 11, 2023, and a classroom observation on May 10, 2023 (Dist. Exs. 3 at pp. 1-2; 4 at pp. 1-2).

A Committee on Preschool Special Education (CPSE) convened on May 4, 2023 to develop an IEP for the purpose of recommending 12-month services for the 2023-24 school year (*id.*). The May 2023 CPSE continued to find the student eligible for special education and related services as a preschool student with a disability and recommended summer services only, consisting of five hours per week of special education itinerant teacher (SEIT) services in a group of three, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual occupational therapy (OT) (*id.* at pp. 1, 9-10).¹

A CSE convened on May 30, 2023, found the student eligible for related services as a student with a speech or language impairment, and developed an individualized education services program (IESP) with a projected implementation date of September 1, 2023 (Dist. Exs. 8 at pp. 1, 5, 7; 11 at pp. 1-2). The May 2023 CSE recommended 10-month services consisting of one 30-minute session per week of individual speech-language therapy delivered in Yiddish, one 30-minute session per week of group speech-language therapy delivered in Yiddish, and two 30-minute sessions per week of individual OT delivered in English (Dist. Exs. 8 at p. 5).²

On July 25, 2023, the parent electronically signed a "Parent Service Contract" with Enhanced Support Services (Enhanced Support) for the 2023-24 school year, beginning July 1, 2023 and continuing through June 30, 2024 (Parent Ex. F). The language in the contract stated that the district "ha[d] not offered any suitable providers to [the student] in connection with the recommended services ...for the 2023-24 school year" (*id.*). The contract indicated that Enhanced Support would "make every effort to implement the recommended services with suitably qualified providers for the 2023-24 school year" (*id.*). The parent also confirmed that she would be "liable to pay Enhanced Support [] the full amount for all recommended services delivered ...for the 2023-24 school year in the event that [the p]arent [wa]s unable to secure funding from the [district] or

¹ State law defines SEIT services (or, as referenced in State regulation, "Special Education Itinerant Services" [SEIS]) as "an approved program provided by a certified special education teacher . . . , at a site . . . , including but not limited to an approved or licensed prekindergarten or head start program; the child's home; . . . or a child care location" (Educ. Law § 4410[1][k]; 8 NYCRR 200.16[i][3][ii]; *see* "[SEIS] for Preschool Children with Disabilities," Office of Special Educ. Field Advisory [Oct. 2015], *available at* <https://www.nysed.gov/special-education/special-education-itinerant-services-preschool-children-disabilities>). A list of New York State approved special education programs, including SEIS programs, can be accessed at <https://www.nysed.gov/special-education/approved-preschool-special-education-programs>. SEIT services are "for the purpose of providing specialized individual or group instruction and/or indirect services to preschool students with disabilities" (8 NYCRR 200.16[i][3][ii]; *see* Educ. Law § 4410[1][k]).

² The minutes from the May 2023 CSE meeting indicate that the CSE discussed recommending two 30-minute sessions per week of individual speech-language therapy (Dist. Ex. 11 at p. 1).

elsewhere" (id.). The parent service contract stated that Enhanced Support intended to provide SEIT services at a rate of \$195 per hour and speech-language therapy at a rate of \$250 per hour (id.).

By letter dated September 11, 2023, the parent, through her attorney, provided the district with 10-day written notice alleging that the district failed to conduct a CSE meeting and recommend a program and placement for the 2023-24 school year (Parent Ex. C at p. 2). The parent stated that she was "left with little choice but to implement the program as set forth in the prior IEP dated 5/4/2023" (id.). The parent further claimed that the May 2023 CPSE IEP recommended 12-month services consisting of five 30-minute sessions per week of SEIT services, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual OT (id.).

A. Due Process Complaint Notice

In a September 11, 2023 due process complaint notice, the parent alleged that the district failed to offer the student a FAPE for the 2023-24 school year (Parent Ex. A at p. 2). The parent expressed concern regarding the delay in convening a CSE to develop an IEP for the 12-month 2023-24 school year and asserted that the delay in recommending proper placement and services was a denial of a FAPE to the student (id.). The parent contended that due to the district's failure to develop an appropriate program, the parent "[wa]s left with no choice but to continue providing the previously recommended program" for the 12-month 2023-24 school year "on their own accord" (id.). The parent also claimed that pendency lay in a May 4, 2023 CPSE IEP, and that the student's pendency services consisted of five 30-minute sessions per week of SEIT services in a group of three, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions of individual OT (id.). As relief, the parent requested funding for the services recommended in the May 4, 2023 CPSE IEP "for the complete 12[-month] 2023-24 school year at a reasonable market rate," funding for a bank of compensatory education "for the entire 12[-month] 2023-24 school year - or the parts which were not serviced" (id. at p. 3).

B. Impartial Hearing and Decisions

The parties convened before an IHO on November 20, 2023 for a hearing on the issue of pendency (Tr. pp. 5-10).³ During the pendency hearing, the parent's attorney argued that pendency lay in the May 4, 2023 CPSE IEP and that the student was entitled to 12-month services consisting of five 30-minute sessions per week of SEIT services in a group of three, delivered in English, two 30-minute sessions per week of individual speech-language therapy delivered in English, and two 30-minute sessions per week of individual OT delivered in English (Tr. p. 8). The district did not object to the parent's proposal for pendency (id.).

On May 1, 2024, the parties reconvened for an impartial hearing on the merits of the parent's due process complaint notice (Tr. pp. 58-78). The parties reconvened on June 14, 2024 for an impartial hearing date (Tr. pp. 79-87). After stating his appearance, the parent's attorney

³ According to the transcript, the IHO and an attorney for the parent appeared on October 16, 2023, however the district did not appear (Tr. pp. 1-4). The parent's attorney requested a pendency hearing, which the IHO scheduled (Tr. p. 2).

indicated that a pendency hearing needed to be conducted (Tr. p. 80). After a discussion on the record—during which neither the IHO nor the parties recalled the prior pendency hearing that had been conducted—the IHO scheduled a second hearing on pendency (Tr. pp. 80-84).⁴ The parties reconvened on July 1, 2024 for a second hearing on pendency (Tr. pp. 92-101). The parent disclosed three documents, which were admitted into evidence (Tr. p. 96).⁵ The parent's attorney argued that the student's pendency was based on the May 2023 CPSE IEP (Tr. p. 96). The district's attorney stated that he did not disagree with the programming, however he asserted that the district was entitled to implement the student's pendency services (Tr. p. 97). The IHO stated that she would review the exhibits and transcript, and "make an order or not make an order" (*id.*).

On August 2, 2024 and August 23, 2024, the parties reconvened for another impartial hearing date, during which the parent presented witness testimony in support of her claims (Tr. pp. 102-46). By written motion to dismiss dated September 13, 2024, the district argued that the IHO lacked subject matter jurisdiction to review the parent's claims set forth in her due process complaint notice. (Mot. to Dismiss at pp. 2-5). The parent opposed the district's motion to dismiss in a Memorandum of Law dated October 1, 2024 (Parent Mem. of Law in Opp'n to Dist. Mot. to Dismiss at pp. 1-20). The parties also appeared before the IHO on October 1, 2024, and the IHO scheduled an additional hearing date for argument on the district's motion to dismiss (Tr. pp. 147-50). The parties appeared on November 13, 2024 for a hearing on the district's motion to dismiss (Tr. pp. 151-60).⁶

In an interim decision dated December 13, 2024, the IHO denied the district's motion to dismiss, finding that she had subject matter jurisdiction over the student's claims in accordance with of the New York State Education Law § 3602-c and § 4404 (Dec. 13, 2024 Interim IHO Decision at pp. 1-4).⁷ The parties reconvened on December 18, 2024 to submit closing briefs into the hearing record (Tr. pp. 164-69).

The IHO issued two decisions on the same day after the conclusion of the due process proceedings. In a second interim decision entitled "Order of Pendency" dated December 22, 2024, the IHO initially noted that the parent requested five 30-minute sessions per week of SEIT services in a group of three, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual OT, which the parent claimed was based on a May 2023 CPSE IEP (Dec. 22, 2024 Interim IHO Decision at p. 3). The IHO determined that the

⁴ On June 26, 2024, the district's attorney and the IHO convened in order to discuss pendency, however, the parent's attorney did not appear (Tr. pp. 88-91).

⁵ The parent disclosed three exhibits, A-C, which were identical to parent exhibits A-C admitted into evidence on February 22, 2024. The IHO is reminded that it is her responsibility to maintain an accurate account of the documents admitted into evidence and to exclude evidence that she determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

⁶ According to the transcript, the IHO appeared on November 18, 2024, for an unspecified reason (Tr. pp. 161-63). Neither party appeared and the IHO adjourned the matter until December 18, 2024 (Tr. pp. 161-62).

⁷ The IHO's interim decision on the district's motion to dismiss is not paginated. For purposes of this decision, the pages will be cited by reference to their consecutive pagination with the first page as page one (Dec. 13, 2024 Interim IHO Decision at pp. 1-5).

student's pendency services were based on the May 4, 2023 CPSE IEP and consistent with the parent's request for five 30-minute sessions per week of SEIT services in a group of three, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute sessions per week of individual OT (id. at pp. 4-5). The IHO ordered the district to provide the student with pendency services on a 12-month basis, retroactively to the filing date of the September 11, 2023 due process complaint notice (id. at p. 5).

In a final decision dated December 22, 2024, the IHO found that the May 2023 IESP offered the student a FAPE for the 2023-24 school year (IHO Decision at pp. 8-10).⁸ The IHO further determined that the district met its burden of proof and that the parent was not entitled to reimbursement or direct funding for her unilaterally obtained services (id. at p. 10).

IV. Appeal for State-Level Review

Upon issuance of the IHO's final determination both parties appeal from interim decisions in accordance with 8 NYCRR 279.10(d). The parent appeals from the IHO's December 2022 interim decision, arguing that the IHO improperly failed to address the student's right to pendency and further asserts that the IHO's interim order on pendency contains a "scrivener's error."⁹ As relief, the parent requests that the IHO's interim order on pendency be modified to "allow for" five hours of special education teacher support services (SETSS), "rather than the obvious clerical error of the 5x30min (2.5 hours) which was listed in the order."¹⁰

In an answer with cross-appeal the district opposes the parent's position regarding the IHO's December 22, 2024 interim decision and argues that that it was the May 2023 CPSE IEP that contained a scrivener's error by referencing five "hours" per week of SEIT services in the frequency column of the IEP and the duration column in the IEP then correctly listed 30-minute sessions for SEIT services. The district asserts that the parent specified five 30-minute sessions of SEIT services in her due process complaint notice, 10-day notice letter, the parent's testimony during the impartial hearing and that only in testimony by a program coordinator at Enhanced Services during the impartial hearing did the parent reference five "periods" per week of "SETSS." The district further contends that the parties agreed during the impartial hearing that the May 2023 CPSE IEP recommended five 30-minute sessions per week of SEIT services. The district also alleges that the parent is not entitled to choose how and where to implement the student's pendency services. Lastly, the district cross-appeals from the IHO's December 13, 2024 interim decision

⁸ The IHO's decision is not fully paginated. The decision includes page numbers for pages two through three, with the cover counted as page one. For purposes of this decision, the pages will be cited by reference to their consecutive pagination with the first page as page one (IHO Decision at pp. 1-18).

⁹ The parent has not appealed from the IHO's determination that the May 2023 IESP offered the student a FAPE for the 2023-24 school year (IHO Decision at p. 10). Therefore, this finding is final and binding on the parties and will not be reviewed on appeal (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]).

¹⁰ 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.

denying its motion to dismiss the parent's due process complaint notice for lack of subject matter jurisdiction.¹¹

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]).¹² "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.*).¹³ Thus, under State law an

¹¹ The district contends that the parent's request for review should be dismissed for failure to comply with the pleading requirements of Part 279. Having considered the arguments presented by the parties' and the circumstances presented, I decline to dismiss the parent's request for review on this basis.

¹² 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]).

¹³ 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

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

A. Subject Matter Jurisdiction

Turning first to the district cross-appeal from the IHO's denial of its motion to dismiss for lack of subject matter jurisdiction, I note at the outset that this was not only a dispute over the amount that the district was willing to pay Enhanced Services. Instead, the parent's September 11, 2023 due process complaint notice asserted that a CSE failed to convene to develop a program and offer a placement for the 2023-24 school year, and thus did not assert any specific deficiency related to the May 2023 IESP (see Parent Ex. A). Accordingly, there can be no dispute that the IHO had jurisdiction to address that aspect of the parent's due process complaint notice. Notwithstanding the that the factual allegations in the due process complaint notice did not bear out, the district presented evidence that a May 2023 IESP was developed for the 2023-24 school year and not implemented. The parties proceeded to an impartial hearing on the merits of the parent's request for funding of unilaterally obtained services as relief for the district's failure deliver services to the student. As noted above, the parties do not appeal from the IHO's determination that the district refuted the parent's claim that a CSE failed to convene to recommend programming for the 2023-24 school year or that the resultant May 2023 IESP offered the student a FAPE. Further, neither party has alleged that the IHO improperly expanded the scope of the impartial hearing to address claims not raised in the parent's due process complaint notice. Notwithstanding these points, the district continues to press its argument on appeal that the due process complaint should have been dismissed because the IHO had no jurisdiction.

Subject matter jurisdiction refers to "the courts' statutory or constitutional power to adjudicate the case" (Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 89 [1998]). The district argues that federal law confers no right to file a due process complaint regarding services recommended in an IESP and New York law confers no right to file a due process complaint regarding IESP implementation. Thus, according to the district, IHOs and SROs lack subject matter jurisdiction with respect to pure IESP implementation claims.

However, even if this matter did solely involve implementation of the student's IESP during the 2023-24 school year, such a claim is subject to due process. In numerous recent decisions, the undersigned and other SROs have rejected the district's position that IHOs and SROs lack subject

the paginated pdf versions of the documents previously available do not currently appear there, having been updated with web-based versions.

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. 25-077; Application of a Student with a Disability, Appeal No. 25-076; Application of a Student with a Disability, Appeal No. 25-075; Application of a Student with a Disability, Appeal No. 25-074; Application of a Student with a Disability, Appeal No. 25-071; Application of a Student with a Disability, Appeal No. 25-067; Application of a Student with a Disability, Appeal No. 24-620; 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 district's argument under federal law is correct; however, the student did not merely have a services plan developed pursuant to federal law and the parents 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]).¹⁴

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]).

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 [FAPE]" (Educ. Law § 4404[1][a]; see 20 U.S.C. § 1415[b][6]). SROs have in the past, taking into account the text and legislative history of Education Law § 3602-c, concluded that the legislature has not eliminated 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).¹⁵ In addition, the New York Court of Appeals has explained that students

¹⁴ 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]).

¹⁵ In 2004, the State Legislature amended subdivision two of the Education Law § 3602-c, to take effect June 1, 2005 (see L. 2004, ch. 474 § 2 [Sept. 21, 2004]). Prior to such date, the subdivision read in part:

Review of the recommendation of the committee on special education may be obtained by the parent, guardian or persons legally having custody of the pupil pursuant to the provisions of section forty-four hundred four of this chapter. Such school district shall contract with the school district in which the nonpublic school attended by the pupil is located, for the provision of services pursuant to this section. The failure or refusal of a board of education to provide such services in accordance with a proper request shall be reviewable only by the commissioner upon an appeal brought pursuant to the provisions of section three hundred ten of this chapter.

(L. 1990, ch. 53 § 49 [June 6, 1990] [emphasis added]). The amendments that became effective on June 1, 2005, removed the last sentence of subdivision two relating to the review of a board of education's failure or refusal to provide equitable services by the Commissioner (L. 2004, ch. 474 § 2). A review of the statute's history and the New York State Assembly Memorandum in Support of Legislation shows that the Legislature intended to remove the language that an appeal to the Commissioner of Education under Education Law § 310 was the exclusive vehicle for review of the refusal or failure of a board of education to provide services in accordance with Education Law § 3602-c, given that the earlier sentence in subdivision two of such section authorized review by an SRO from a district CSE's determination in accordance with Education Law § 4404 (Sponsor's Memo., Bill Jacket, L. 2004, ch. 474). The Memorandum explains further:

authorized to receive dual enrollment services pursuant to Education Law § 3602-c are considered part-time public school students under State Law (Bd. 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.

In 2007 the State Department of Education issued guidance further interpreting Education Law § 3602-c after legislative amendments in 2007 took effect, which provides that "[a] parent of a student who is a [New York State] resident who disagrees with the individual evaluation, eligibility determination, recommendations of the CSE on the IESP and/or the provision of special education services may submit a Due Process Complaint Notice to the school district of location" ("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 3206-c," Attachment 1 at p. 5, VESID Mem. [Sept. 2007] [emphasis added], available at <https://www.nysed.gov/sites/default/files/special-education/memo/chapter-378-laws-2007-guidance-on-nonpublic-placements-memo-september-2007.pdf>).

The number of disputes involving the dual enrollment statute statewide remained very small until only a handful of years ago and then dramatically intensified to tens of thousands of due process filings per year within certain regions of this school district in the last several years. As a result, public agencies and parents began to grapple with addressing these circumstances within the district.¹⁶

The language providing for review of a school district's failure or refusal to provide services ONLY in an appeal to the Commissioner of Education under Education Law § 310 is unnecessary, confusing and in conflict with the earlier language authorizing review by a State review officer pursuant to § 4404(2) of the Education Law of a committee on special education's determination on review of a request for services by the parent of a nonpublic school student. At the time it was enacted, the Commissioner of Education conducted State-level review of an impartial hearing officer's decision under § 4404(2) of the Education Law in an appeal brought under § 310 of the Education Law, but that is no longer the case. The Commissioner has jurisdiction under Education Law § 310 to review the actions or omissions of school district officials generally, so it is unnecessary to provide for such review in § 3602-c and, now that a State review officer conducts reviews under section 4404(2), it is misleading to have the statute assert that an appeal to the Commissioner is the exclusive remedy.

(Sponsor's Memo., Bill Jacket, L. 2004, ch. 474). Thus, the amendments made by the State Legislature were intended to clarify the forum where disputes could be brought, not 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.

¹⁶ 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

In its answer and cross-appeal, the district contends that under the Education Law, there is not, and never has been, a right to bring a complaint for the implementation of IESP claims. Consistent with the district's position, 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]).¹⁷ However, the guidance was issued in conjunction with a regulation that was adopted on an emergency basis that has since lapsed as further described below.

Case law has not addressed the issue of whether Education Law § 3602-c imposes limitations on the right to an impartial hearing under Education Law § 4404 such as precluding due process complaints on the implementation of an IESP or if certain types of relief available under § 4404 are repudiated by the due process provisions of § 3602-c. Instead, case law has carved out a narrow exception of when exhaustion is not required if the "plaintiff's claim is limited to the allegation that 'a school has failed to implement services that were specified or otherwise clearly stated in an IEP'" (*Levine v. Greece Cent. Sch. Dist.*, 353 F. App'x 461, 465 [2d Cir. 2009], quoting *Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 489 [2d Cir. 2002]; see *Intravaia v. Rocky Point Union Free Sch. Dist.*, 919 F. Supp. 2d 285, 294 [E.D.N.Y. 2013]).

More recently, the New York State Supreme Court has also signaled that administrative exhaustion is not required, indicating that, if the district fails to implement the services listed on

Education Due Process Hearings," SED Mem. [May 2024], available at <https://www.regents.nysed.gov/sites/regents/files/524p12d2revised.pdf>). Ultimately, however, the proposed regulation was not adopted. 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]); however enforcement was barred under a temporary restraining order (see *Agudath Israel of America v. New York State Bd. of Regents*, No. 909589-24, Order to Show Cause [Sup. Ct., Albany County, Oct. 4, 2024]) and the regulation has since lapsed.

¹⁷ 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. 23-121; *Application of a Student with a Disability*, Appeal No. 23-069; *Application of a Student with a Disability*, Appeal No. 23-068). The guidance document is no longer available on the State's website; however, is included in the hearing record (Dist. Mot. to Dismiss at pp. 17-26).

their child's IESP, the parents seeking an enhanced rate apply to the district's Enhanced Rate Equitable Services (ERES) unit, and the requested rates are denied, the parents could seek judicial review (Agudath Israel of America v. New York State Bd. of Regents, No. 909589-24, slip op. at 7 [Sup. Ct., Albany, County, July 11, 2025]). However, the Court did not address whether parents must use the ERES procedure or whether they may also permissively utilize the administrative due process procedures. Because petitioners sought injunctive relief of a State regulation that had lapsed, the Court denied petitioners' request for a preliminary injunction as moot, and further denied their request for a permanent injunction "because there [wa]s an adequate remedy at law" regarding the ERES procedure and subsequent opportunity for judicial review (Agudath Israel of America, No. 909589-24, slip op. at 6, 7). The Court acknowledged that all parties believed the backlog in resolving the large number of "enhanced rate" cases in due process proceedings is "a significant problem" (*id.* at p. 7).¹⁸ However, the Court did not resolve the parties' disagreement as to whether rate disputes could be resolved under the text of Education Law § 3602-c (*id.*). Although petitioners contended that the ERES unit was not equipped to address enhanced rate requests, the Court also declined to address that issue because the district was not a party to the litigation (*id.*).

Thus, case law has established that within the district, parents may use the ERES procedures and seek judicial review regarding the lack of implementation of the services in a child's IESP, particularly where the due process complaint is limited to that issue and the cost of such services; however, the Court declined to go further to hold that the dual enrollment statute precludes parents from using the due process procedures in Education Law § 4404 to resolve the dispute set forth in this case. Accordingly, the IHO correctly denied the district's motion to dismiss for lack of subject matter jurisdiction, and the district's request for dismissal of the parents' appeal on the same ground must also be denied.

B. Pendency

The parent alleged in her September 11, 2023 due process complaint notice that the student was entitled to the services recommended in the May 4, 2023 CPSE IEP as pendency (Parent Ex. A at p. 2). Specifically, the parent requested 12-month services consisting of five 30-minute sessions per week of SEIT services in a group of three to be delivered in English, two 30-minute sessions per week of individual speech-language therapy to be delivered in English, and two 30-minute sessions per week of individual OT to be delivered in English (*id.*). The parent attached a pendency implementation form to the due process complaint notice that also referred to the May 4, 2023 CPSE IEP as the last agreed upon program and placement and set forth the same durations and frequencies of recommended services as those requested in the due process complaint notice (compare Parent Ex. A at p. 2, with Parent Ex. A at p. 4).

In her December 22, 2024 interim decision on pendency, the IHO ordered the district to provide 12-month services consisting of five 30-minute sessions per week of SEIT services in a

¹⁸ There is no definition of an "enhanced rate" much less an enhanced rate dispute, and many cases brought before the Office of State Review that one or both of the parties and/or the IHO characterize as an enhanced rate dispute involve a variety of alleged infractions by the district beyond the district's failure to implement services on an IESP, such as allegations that the district failed to convene a CSE to develop an IESP or that the IESP developed was not appropriate for the student.

group of three to be delivered in English, two 30-minute sessions per week of individual speech-language therapy to be delivered in English, and two 30-minute sessions per week of individual OT to be delivered in English "for the entire pendency" of the matter, "retroactive to the date of filing" of the due process complaint notice on September 11, 2023 (Dec. 22, 2024 Interim IHO Decision at p. 5).¹⁹

The parties do not dispute that the student's entitlement to 12-month services consisting of two 30-minute sessions per week of individual speech-language therapy to be delivered in English, and two 30-minute sessions per week of individual OT to be delivered in English, yet the parent asserts that the IHO's interim decision on pendency incorrectly ordered five 30-minute sessions per week of SEIT services and that the May 4, 2023 CPSE IEP called instead for five hours per week of SEIT services rather than five 30-minute sessions per week.

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]).²⁰ 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;

¹⁹ In its answer and cross-appeal, the district argues that the SRO should annul the IHO's "contrary finding" that the district was not entitled to implement pendency and "deny the [p]arent's request for pendency funding of their privately obtained services" (Answer and Cr.-appeal ¶ 27). As noted above, the IHO did not determine that the parent was entitled to funding for privately obtained services as pendency, rather the district was directed to provide pendency services.

²⁰ 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).

O'Shea, 353 F. Supp. 2d at 459 [noting that "pendency placement and appropriate placement are separate and distinct concepts"]).

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]). 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]).

Review of the evidence regarding the May 4, 2023 CPSE IEP reflects some inconsistencies. The summary of the IEP page includes a recommendation for July and August 2023 of "five hours" of SEIT services with no frequency listed and in the program recommendation section of the CPSE IEP itself includes SEIT services in a group of three at a frequency of "5 hours a week" at a duration of "30 minute sessions" at an early childhood program selected by the parent, with an implementation date of June 1, 2023 (compare Parent Ex. B at p. 1, with Parent Ex. B at p. 9). The district argues that the frequency column contains the error, and that the student should have been recommended to receive five sessions per week, rather than five hours. The frequency column correctly lists the number of times per week for the remaining related services (*id.*).

As indicated above a student's "then-current educational" placement or pendency placement can be based upon: (1) by agreement between the parties; (2) by an unappealed IHO or court decision in favor of the parents; or (3) by an SRO decision that a unilateral parental placement is appropriate (34 CFR 300.518[a], [d]; 8 NYCRR 200.5[m][1], [2]; see Ventura de Paulino, 959 F.3d at 532; Bd. of Educ. of Pawling Cent. Sch. Dist., 290 F.3d at 483-84; New York City Dep't of Educ. v. S.S., 2010 WL 983719, at *1 [S.D.N.Y. Mar. 17, 2010]; Student X, 2008 WL 4890440, at *23; Arlington Cent. Sch. Dist., 421 F. Supp. 2d at 697; Murphy, 86 F. Supp. 2d at 366; Letter to Hampden, 49 IDELR 197 [OSEP 2007]).

While there is no disputing that the May 4, 2023 CPSE IEP contains inconsistencies that the IHO did not address, those errors are of no moment as review of the hearing record demonstrates that the parties agreed that the student was entitled to 12-month services consisting of five 30-minute sessions of SEIT services as pendency.

The parent's September 11, 2023 10-day notice letter, and September 11, 2023 due process complaint notice with accompanying pendency implementation form collectively assert that the parent sought five 30-minute sessions per week of SEIT services as pendency (Parent Exs. A at pp. 2, 4; C at p. 2). In addition, the parent herself submitted direct testimony by affidavit, wherein she averred the student was recommended to receive five 30-minute sessions per week of SEIT services (Parent Ex. D ¶ 3). During the November 20, 2023 pendency hearing, the parent's attorney requested five 30-minute sessions per week of SEIT services in a group of three as pendency (Tr. p. 8). When asked by the IHO if the district objected to the parent's request, the district's attorney stated "[n]o" (*id.*). These facts alone are sufficient to determine the student's pendency placement as of the date of the due process complaint notice.

However, a second discussion of the issue of pendency nevertheless occurred only due to the collective failure to examine the record of proceedings from seven months prior or recall that the issue had already been resolved. During the July 1, 2024 pendency hearing, the parent offered parent exhibits A-C, which were admitted into evidence a second time (Tr. p. 96). This time, the parent's attorney did not indicate the specific services the parent was requesting as pendency on the record, but he offered the September 11, 2023 due process complaint notice, the May 2023 CPSE IEP, and the September 11, 2023 10-day notice letter into evidence and stated that the May 2023 CPSE IEP represented the last agreed-upon program (*id.*). However, the parent's attorney did not acknowledge that there were any differences in the duration of SEIT services requested in the September 11, 2023 due process complaint notice or September 11, 2023 10-day notice letter from the duration of SEIT services recommended in the May 2023 CPSE IEP (*see* Tr. pp. 92-101). Whether due to failed memory that the issue had been agreed upon or for some other reason, the parent's attorney did not acknowledge the prior pendency hearing, nor did he make any attempt to reconcile the differences between the parent's repeated requests for five 30-minute sessions of SEIT services with the apparent inconsistent recommendation in the May 2023 CPSE IEP. Thus, the hearing record demonstrates that the parties agreed on November 20, 2023 that the student was entitled to five 30-minute sessions of SEIT services as pendency. The transcript of the July 1, 2024 pendency hearing lacks any specificity regarding the student's pendency services and is too vague to constitute a superseding agreement between the parties to change the frequency and duration of SEIT services from the prior agreement which explicitly stated the services the parent invoked as pendency.

As for implementation of the interim decision on pendency, "[i]t is up to the school district to decide how to provide that educational program, at least as long as the decision is made in good faith" (*T.M.*, 752 F.3d at 171, citing *Concerned Parents*, 629 F.2d at 756). Based on the foregoing, there is no basis in the hearing record to disturb the IHO's determination of the student's pendency services in her December 22, 2024 interim decision on pendency.

VII. Conclusion

In summary, the IHO correctly determined that she had subject matter jurisdiction to review the parent's claims set forth in the due process complaint notice and did not err in denying the district's motion to dismiss. In addition, there is no reason to disturb the IHO's conclusion that the student was entitled to five 30-minute sessions per week of SEIT services in a group of three, two 30-minute sessions per week of individual speech-language therapy, and two 30-minute

sessions per week of individual OT to be provided by the district as pendency beginning on September 11, 2023 and continuing through the entirety of the proceedings.

THE APPEAL IS DISMISSED

THE CROSS-APPEAL IS DISMISSED.

Dated: **Albany, New York**
 July 31, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER