The University of the State of New York

The State Education Department
State Review Officer
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No. 23-172

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:
Liz Vladeck, General Counsel, attorneys for petitioner, by Brian J. Reimels, 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 district) appeals from the decision of an impartial hearing officer (IHO) which ordered it to reimburse respondent (the parent) for her son's tuition costs at the Winston Preparatory School (Winston Prep) for the 2022-23 school year with compounding interest be paid by the district if it did not make the ordered payments within 30 days of the IHO's decision. The appeal must be sustained.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

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

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

III. Facts and Procedural History

The parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited here in detail.

By letter dated November 12, 2021, the parent indicated that the private tutoring that she had obtained for the student for the 2021-22 school year at her own expense was not sufficient to address his needs and requested that the district evaluate the student to determine his eligibility for special education (see Parent Ex. D). The parent obtained a private neuropsychological evaluation of the student, which was conducted in March 2022 (see Parent Ex. H). A CSE convened on May 26, 2022, found the student eligible for special education as a student with autism, and developed an IEP for the 2022-23 school year (sixth grade) that recommended the student be placed in a

12:1+1 special class in a State-approved nonpublic school (see generally Parent Ex. C).[1] The parent disagreed with the recommendations contained in the May 2022 IEP, opined that "several schools" that contacted her about possibly admitting the student but that the schools could not meet his needs, and asserted that the process for convening the CSE and identifying a nonpublic school had been unreasonably delayed; as a result, the parent notified the district of her intent to unilaterally place the student at Winston Prep (see Parent Exs. B; V).[2] In a due process complaint notice, dated February 23, 2023, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2021-22 and 2022-23 school years (see Parent Ex. A).

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on March 30, 2023 and concluded on May 11, 2023 after three days of proceedings, including a prehearing conference (Tr. pp. 1-52). In a decision dated July 6, 2023, the IHO determined that the district failed to offer the student a FAPE for the 2021-22 and 2022-23 school years, that Winston Prep was an appropriate unilateral placement, and that equitable considerations weighed in favor of the parent's request for an award of tuition reimbursement (IHO Decision at pp. 11-15). As relief, the IHO ordered the district to reimburse the parent for the cost of the student's tuition at Winston Prep for the 2022-23 school year; transportation services; tutoring services obtained during the 2021-22 school year; and the neuropsychological independent educational evaluation (IEE) (IHO Decision at pp. 19-22).[3] In addition, the IHO ordered that, if the district failed to pay the parent within 30 days of the date of her decision, interest would "accrue at a rate of nine percent, compounded monthly until the ordered sums [we]re paid" (id. at p. 22).

IV. Appeal for State-Level Review

The district appeals and argues that the IHO erred by ordering payments be made to the parent within 30 days or be subject to compounding interest.[4] The district argues that the IHO exceeded her jurisdiction by making such an award because the IHO was attempting to enforce the final order which is not permitted under the IDEA and that the order amounted to a financial penalty on the district. Moreover, the district asserts that the order does not contemplate that the payment could be made more than 30 days after the date of the decision through no fault of its own, as the district requires a parent to provide information regarding where payment should be made. Should a parent not provide this information, the district argues it would be unable to comply with the order. Further, the district contends that the order is an award of monetary

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

[2] Winston Prep 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).

[3] The IHO also ordered the district to provide the student with special transportation services to and from the student's private school (IHO Decision at p. 22).

[4] In the request for review, the district only appeals the issue of the IHO's order for interest to accrue should it not pay the parent within 30 days of the decision. As such, all of the other IHO findings and orders are final and binding on the parties and will not be further discussed (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

damages which are not permitted under the IDEA. Lastly, the district argues that a parent is not left without recourse should the district fail to comply with the order as she is able to seek relief in State or federal court. For all of these reasons, the district asserts that the IHO erred by ordering compounding interest should the district fail to make all payments within 30 days.

The parent did not interpose an answer to the district's request for review.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. 386, 399 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support

services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 580 U.S. at 404). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Endrew F., 580 U.S. at 403 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).[5]

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

[5] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 580 U.S. at 402).

have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

VI. Discussion

An IHO generally has broad authority to fashion appropriate equitable relief (see, e.g., Mr. and Mrs. A v. New York City Dep't of Educ., 769 F. Supp. 2d 403, 422-23, 427-30 [S.D.N.Y. 2011]; see Forest Grove v. T.A., 129 S.Ct. 2484 [2009]); however, an IHO may not use this authority to order relief to remedy an issue that was not raised or which otherwise exceeds the IHO's jurisdictional limits. Generally, the party requesting an impartial hearing has the first opportunity to identify the range of issues to be addressed at the hearing (Application of a Student with a Disability, Appeal No. 09-141; Application of the Dep't of Educ., Appeal No. 08-056). Under the IDEA and its implementing regulations, a party requesting an impartial hearing may not raise issues at the impartial hearing that were not raised in its original due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[i][7][i][a]; [j][1][ii]), or the original due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.507[d][3][ii]; 8 NYCRR 200.5[i][7][b]). Moreover, it is essential that an IHO disclose his or her intention to reach an issue which the parties have not raised as a matter of basic fairness and due process of law (Application of a Child with a Handicapping Condition, Appeal No. 91-40; see John M. v. Bd. of Educ., 502 F.3d 708 [7th Cir. 2007]).

Here, there is no indication that the parent was charged interest by the tutor, Winston Prep, the transportation provider, or the evaluator who conducted the neuropsychological evaluation for which the parent sought reimbursement from the district (Parent Exs. I; M; N; T; W). Although the Winston Prep contract provided that a tuition payment default would result in late charges of 1.5 percent per month beginning 30 days after the default, the parent timely paid the tuition owed under the contract and Winston Prep did not charge interest (Parent Exs. M-N). Further, review of the parent's February 23, 2023 due process complaint notice and the hearing record as a whole reflects that the parent did not set forth any request for interest to accrue against the district (see generally Parent Ex. A; see also Tr. pp. 1-52; Parent Exs. A-AA). Nor did the IHO disclose to the parties an intention to order interest or allow the district to be heard in response.

Generally, in federal and State civil matters, prevailing plaintiffs may be awarded interest on civil judgments (28 U.S.C. 1961[a]; CPLR 5003; 5004).[6] However, I am aware of no authority which grants IHOs or SROs the authority to order interest on orders of reimbursement for tuition or other costs incurred by parents awarded pursuant to the IDEA. Relief available under the IDEA, such as tuition reimbursement, "merely requires the [district] to belatedly pay expenses that it

[6] Here, the IHO's award of nine percent interest is similar to the interest that accrues on judgements made under CLPR 5004 which states "[i]nterest shall be at the rate of nine per centum per annum, except where otherwise provided by statute. The CPLR provision is not applicable to due process proceedings brought pursuant to IDEA.

should have paid all along and would have borne in the first instance had it developed a proper IEP" and, is therefore, not deemed an award of damages (Burlington, 471 U.S. at 370-71). Compensatory damages are not available in the administrative forum under the IDEA (see Taylor v. Vt. Dep't of Educ., 313 F.3d 768, 786 n.14 [2d Cir. 2002]; Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist., 288 F.3d 478, 483 [2d Cir. 2002]; see Avaras v. Clarkstown Cent. Sch. Dist., 2017 WL 3037402, at *26 [S.D.N.Y. July 17, 2017] [finding lost wages are not recoverable under IDEA]; R.B. v. Bd. of Educ. of the City of New York, 99 F. Supp. 2d 411, 418 [S.D.N.Y. 2000]). However, here, the IHO's award of interest against the district, which is the value of the parent's money over time, is very similar to the concept of lost wages that are the loss of the parent's earning potential over time and thus an award of compensatory damages and, therefore, the interest provisions for potential delayed payment exceeded the scope of her remedial authority. The fact that the interest penalty is avoidable through prompt payment by the district does nothing to cure this defect.

IHO decision is bereft of any rationale for the order of compounding interest. To the extent the IHO's intent in ordering such relief was to address a perceived systemic problem with implementation of IHO orders in the district, generally, "systemic violations [are] to be addressed by the federal courts," as opposed to "technical questions of how to define and treat individual students' learning disabilities, which are best addressed by administrators" (Levine v. Greece Cent. Sch. Dist., 2009 WL 261470, at *9 [W.D.N.Y. Feb. 4, 2009] aff'd, 353 Fed. App'x 461 [2d Cir. Nov. 12, 2009]; see also Application of a Student with a Disability, Appeal No. 11-091). Thus, neither the IHO, nor I for that matter, have plenary authority to pass judgment on the district implementation policies.

The IHO's directives relating to the implementation of the order tends to intrude on the district's discretion to follow an administrative process to comply with the order (cf. Mendez v. Banks, 65 F.4th 56, 63 [2d Cir. 2023] [in the pendency context, indicating that school districts may implement basic budgetary oversight measures when funding pendency placements and that sprinting to obtain injunctive orders is not permissible because parents are not entitled to payments with such immediacy that it would frustrate the fiscal policies of participating states]; Landsman v. Banks, 2023 WL 4867399, at *3 [S.D.N.Y. July 31, 2023]; Abrams v. Carranza, 2020 WL 6048785, at *2 [S.D.N.Y. Oct. 13, 2020] [discussing the district's "reasonable documentation requirements" prior to funding pendency and declining to order injunctive relief "mandating immediate payment"], aff'd sub nom., Abrams v. Porter, 2021 WL 5829762 [2d Cir. Dec. 9, 2021]). Further, in a class action lawsuit relating to the district's failure to implement final IHO orders, the district and the class members entered into a stipulation to target the district's timely implementation of orders and the court appointed a special master to bring the district into compliance with its obligations under the stipulation (see LV v. New York City Dep't of Educ., 2021 WL 663718, at *3 [S.D.N.Y. Feb. 18, 2021]; Order with Respect to Motion for Appointment of a Special Master, L.V. v. New York City Dep't of Educ., 03-cv-09917 [S.D.N.Y. filed Dec. 12, 2003]). Insofar as the IHO's order places additional requirements related to the district's implementation of the order, this type of activity by an IHO has the potential to interfere with the processes being implemented pursuant to the stipulation and under the guidance of the special master and the court.

Finally, to the extent the IHO's award of interest was an attempt to direct enforcement of the primary order for reimbursement for tuition and other costs before the district has lapsed or

failed in its implementation, that type of enforcement is not permissible in a due process hearing under IDEA (see H.C. v. New York City Dep't of Educ., 71 F.4th 120, 129 [2d Cir. 2023] [finding the parent not entitled to equitable relief where there district complied with the IHO's order]). In this regard, the district correctly argues that neither IHOs nor SROs have authority to enforce prior decisions rendered by administrative hearing officers (see Educ. Law §§ 4404[1][a]; [2]; see, e.g., A.R. v. New York City Dep't of Educ., 407 F.3d 65, 76, 78 n.13 [2d Cir. 2005] [noting that IHOs do not retain jurisdiction to enforce their orders and that a party who receives a favorable administrative determination may enforce it in court]; A.T. v. New York State Educ. Dep't, 1998 WL 765371, at *7, *9-*10 & n.16 [E.D.N.Y. Aug. 4, 1998] [noting that SROs have no independent "administrative enforcement" power and granting an injunction requiring the district to implement a final SRO decision]). In the event that the district did not implement the IHO's order requiring it to reimburse the parent for tuition and other costs, the parent could seek enforcement, which she could do by filing a State complaint against the district through the State complaint process or by seeking enforcement through the judicial system (see 34 CFR 300.152[c][3]; SJB v. New York City Dep't of Educ., 2004 WL 1586500, at *4-*5 [S.D.N.Y. July 14, 2004] [finding that parties need not initiate additional administrative proceedings to enforce prior administrative orders]; see also A.R. v. New York City Dep't of Educ., 407 F.3d 65, 76, 78 n.13 [2d Cir. 2005]). In such a judicial action, the parent may very well be entitled to an award of interest (see Doe v. E. Lyme Bd. of Educ., 962 F.3d 649, 661–62 [2d Cir. 2020]; Streck v. Bd. of Educ. of the E. Greenbush Cent. Sch. Dist., 408 Fed. App'x 411, 414 [2d Cir. Nov. 30, 2010]), but not before.

Based on the foregoing, as there is no evidence that the compounding interest penalties in the IHO's decision addressed issues raised in the present matter, and as it was beyond the IHO's jurisdiction under the IDEA, that aspect of challenged order of the IHO decision shall be vacated.

VII. Conclusion

For the reasons outlined above, the IHO exceeded her authority in this matter by ordering that interest would accrue at a rate of nine percent, compounded monthly, should the district fail to comply with the other directives in the IHO's decision.

THE APPEAL IS SUSTAINED.

IT IS FURTHER ORDERED that the IHO's decision dated July 6, 2023 is modified by vacating the portion delineated as paragraph six, which ordered that "[i]f the district fails to pay the parent for any of the amounts ordered within thirty days of the IHO decision, interest shall accrue at a rate of nine percent, compounded monthly until the ordered sums are paid."

Dated: **Albany, New York**
September 15, 2023

JUSTYN P. BATES
STATE REVIEW OFFICER