The University of the State of New York

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

No. 24-075

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:
Liz Vladeck, General Counsel, attorneys for respondent, by Nate Munk, 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 the decision of an impartial hearing officer (IHO) which denied in part her request for direct funding of the costs of her son's private special education teacher support services (SETSS) for the 2023-24 school year. The appeal must be sustained.

II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to the same committee that designs educational programing for students with disabilities under the IDEA (20 U.S.C. §§ 1400-1482), namely a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, State law provides that "[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-

c[2][b][1]). Incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

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

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

III. Facts and Procedural History

The parties' familiarity with this matter is presumed and, therefore, the facts and procedural history of the case and the IHO's decision will not be recited here in detail. Briefly, a CSE convened on April 4, 2022, determined the student was eligible for special education as a student with a speech or language impairment, and formulated an IESP for the student to be implemented

starting April 25, 2022 (see generally Parent Ex. B).[1] The April 2022 CSE recommended that the student receive eight periods per week of direct, group SETSS and two 30-minute sessions per week of individual speech-language therapy (id. at p. 9).

In a May 15, 2023 template letter provided by district and then filled out and signed by the parent, the parent notified the district that the student was as a student entitled to a special education program, the student had been parentally placed in a nonpublic school, and that the parent wanted the district continue to provide those services to the student (see Parent Ex. E).

The parent executed a September 7, 2023 contract with Future Plus LLC (Future Plus) to provide the student with "SETSS/SEITS, English, 8 hours per week" at a specified hourly rate and "Speech-Language therapy, individual services, English, 2x30 minutes per week" at a specified rate for the 2023-24 school year (Parent Ex. G). The student attended a private school at the start of the 2023-24 school year that the parent is not seeking funding from the district for and received eight hours per week of SETSS at the school but did not receive speech-language therapy (Tr. pp. 13-24; Parent Exs. A at pp. 1-3; D at p. 1; I).

In a due process complaint notice dated November 12, 2023 and prepared by a nonattorney advocate, Sidney Smith LLC, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) and equitable services for the 2023-24 school year (Parent Ex. A). The parent indicated that she was "left with no choice but to locate and secure private providers for SETSS Direct/Group Services, 8 periods per week; delivered in English and Speech and Language Therapy 1:1, 2 x 30 mins per week; delivered in English" (id. at p. 3). The parent requested a pendency order and an award of direct funding for eight sessions per week of SETSS and two 30-minute sessions of individual speech-language therapy at an enhanced rate (id. at pp. 3-4).

An impartial hearing convened and concluded on January 23, 2024 (Tr. pp. 1-48).[2] In a decision dated January 24, 2023, the IHO determined that the district failed to provide the student with a FAPE for the 2023-24 school year by failing to implement any IESP services and that the parent showed that the eight hours of unilaterally-obtained SETSS for the student were appropriate (IHO Decision at pp. 4-6).[3] Although the IHO found that the parent's requested relief was appropriate, the IHO determined that the "requested rate for SETSS must be reduced" because the SETSS provider was certified to teach students with disabilities in grades one through sixth, and the student was 15-years old and in 10th grade so therefore the agency's "rate . . . for services provided by an individual not certified to teach 10th graders is excessive" and the IHO further found that Future Plus's reimbursement rate contained an inappropriate amount of overhead

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

[2] The hearing record contains a "Prehearing Conference and Summary Order" executed by the IHO dated December 20, 2023 (IHO Interim Order).

[3] The date of the IHO decision reflected on the signature page appears to contain a typo with respect to the year (2023), while the cover page of the decision appears to contain the correct year (2024) (see IHO Decision at pp. 1, 8).

expense (id. at pp. 6-7). As relief, the IHO ordered the district to directly fund "SETSS, individual service, eight times per week, 60 minutes per session; provided by Agency during the 10-month (36 weeks) 2023-24 school year; at a rate not to exceed $75.00 per hour" (id. at p. 7). The IHO additionally ordered the district to directly fund "SLT, individual service, two times per week, 30 minutes per session; provided by a qualified provider of the Parent's choosing; during the 10-month (36 weeks) 2023-24 school year; at a reasonable market rate consistent with the rates paid by [the district's] Implementation Unit in the past six months" (id. at p. 8).

IV. Appeal for State-Level Review

The parent appeals. The parties' familiarity with the particular issues for review on appeal in the parent's request for review and the district's answer thereto is also presumed and, therefore, the allegations and arguments will not be recited here. The parties' dispute on appeal concerns whether the IHO erred in reducing the award of direct funding for the parent's unilaterally obtained SETSS.

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]).[4] "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an [IEP]" (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or

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

nonpublic schools located within the school district (id.).[5] Thus, under State law an eligible New York State resident student may be voluntarily enrolled by a parent in a nonpublic school, but at the same time the student is also enrolled in the public school district, that is dually enrolled, for the purpose of receiving special education programming under Education Law § 3602-c, dual enrollment services for which a public school district may be held accountable through an impartial hearing.

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E. v. New York City Dep't of Educ., 694 F.3d 167, 184-85 [2d Cir. 2012]).

VI. Discussion

Initially I note that neither party appeals from the IHO's findings that the district failed to offer the student a FAPE or provide the student with equitable services for the 2023-24 school year (IHO Decision at pp. 2-4). Furthermore, neither party appeals from the IHO's compensatory education relief award with respect to speech-language therapy (id. at p. 8). Also of import, the district has not cross-appealed the IHO's finding that having reviewed the record the IHO found that the "Parent's requested relief is appropriate" (id. at p. 6). As such, those findings have become 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]).

A. Reduction in Direct Funding

Although the IHO's finding that the unilaterally obtained SETSS was appropriate is final and binding, the IHO's reduction of the direct funding the SETSS remains at issue. Prior to reaching the substance of the parties' arguments regarding the parent's unilaterally-obtained SETSS services, some consideration must be given to the appropriate legal standard to be applied. In this matter, the student has been parentally placed in a nonpublic school and the parent does not seek tuition reimbursement for the cost of the student's attendance there. Rather, the parent seeks public funding of the costs of the private SETSS that she obtained through her contract with Future Plus. Generally, districts that fail to comply with their statutory mandates to provide special

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

education can be made to pay for special education services privately obtained for which a parent paid or became legally obligated to pay, a process that is essentially the same as the federal process under IDEA. Accordingly, the issue in this matter is whether the parent is entitled to public funding of the costs of the private services. "Parents who are dissatisfied with their child's education can unilaterally change their child's placement . . . and can, for example, pay for private services, including private schooling. They do so, however, at their own financial risk. They can obtain retroactive reimbursement from the school district after the [IESP] dispute is resolved, if they satisfy a three-part test that has come to be known as the Burlington-Carter test" (Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 526 [2d Cir. 2020] [internal quotations and citations omitted]; see Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 14 [1993] [finding that the "Parents' failure to select a program known to be approved by the State in favor of an unapproved option is not itself a bar to reimbursement"]).[6]

The parent's request for privately-obtained services must be assessed under this framework. That is, 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 (Carter, 510 U.S. 7; 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. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 252 [2d Cir. 2009]). 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 v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148). The IHO found that the services obtained by the parent were appropriate, and as noted above, the district did not challenge that determination and it has become final and binding.

However the IHO impermissibly blurred the line between appropriate private services and equitable grounds for reducing direct funding for privately obtained services. As the Second Circuit Court of Appeals has recently held, it is error for an IHO to apply the Burlington/Carter test by conducting reimbursement calculations within the IHO's analysis of the appropriateness of the unilateral placement (A.P. v. New York City Dep't of Educ., 2024 WL 763386 at *2 [2d Cir. Feb. 26, 2024] [holding that the IHO should have determined only whether the unilateral placement was appropriate or not rather than holding that the parent was entitled to recover 3/8ths of the tuition costs because three hours of instruction were provided in an eight hours day]). The Court further reasoned that "once parents pass the first two prongs of the Burlington-Carter test, the Supreme Court's language in Forest Grove, stating that the court retains discretion to 'reduce the amount of a reimbursement award if the equities so warrant,' suggests a presumption of a full reimbursement award" (A.P., 2024 WL 763386 at *2 quoting Forest Grove Sch. Dist. v. T.A., 557

[6] State law provides that the parent has the obligation to establish that a unilateral placement is appropriate, which in this case is the special education services that the parent obtained via the contract with the provider (Educ. Law § 4404[1][c]).

U.S. 230, 246-47 [2009]). It was similarly error to reduced direct funding on the ground that the teacher insufficiently certified.

In his decision, the IHO found it relevant to the decision to reduce the direct funding that the SETSS provider did not appear to be certified to teach students past sixth grade and this student was in 10th grade, thus the teacher did not meet State standards (IHO Decision at p. 6; see Parent Ex. H). However, as set forth above, a parent's failure to select a program approved by the State in favor of an unapproved option is not itself a bar to reimbursement (Carter, 510 U.S. at 14). But when assessing whether private services unilaterally obtained by a parent are appropriate, the private services need not employ certified special education teachers or have its own IEP for the student (id. at 13-14). Here, the hearing record contains evidence that supports a finding that the instruction provided by the SETSS provider was specially designed to meet the unique needs of the student in the form of a SETSS progress report, testimony about the provider's experience and the parent's description of the student's progress (see generally Tr. pp. 29-40; Parent Exs. A at p. 4; D; F at pp. 2-4; I), and again none of this was appealed by the district, and is therefore final and binding. Accordingly, the SETSS provider's certification status is not a compelling ground to find that direct funding of the privately obtained SETSS must be reduced or denied.

B. Other Equitable Considerations

Having confirmed the IHO's finding that the parent met her burden to prove that the unilaterally-obtained services were specially designed to meet the student's unique needs and that it was unappealed, I now turn to weigh remaining equitable considerations. The district contends that the IHO's reduction of the rate for funding the unilaterally-obtained SETSS should be upheld because the "record supports the IHO's determination that the cost of the SETSS services was excessive" (Answer ¶¶ 8-11). I disagree. Again, the federal cases are instructive. The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA"]).

Reimbursement may be reduced or denied if parents do not provide notice of the unilateral placement either at the most recent CSE meeting prior to their removal of the student from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 CFR 300.148[d][1]). This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 160 [1st Cir. 2004]). Although a reduction in reimbursement is discretionary, courts have upheld the denial of reimbursement in cases where it was shown that parents failed to comply with this statutory provision (Greenland, 358 F.3d at 160; Ms. M. v. Portland Sch. Comm., 360 F.3d 267 [1st Cir. 2004]; Berger, 348 F.3d at 523-24; Rafferty v. Cranston Public Sch. Comm., 315 F.3d 21, 27 [1st Cir. 2002]); see Frank G., 459 F.3d at 376; Voluntown, 226 F.3d at 68).

Here there was no finding by the IHO that the parent failed to cooperate with the district or interfered with the district's offer of equitable services, and the district makes no such allegations on the appeal. The hearing record contains evidence that the parent timely requested the provision of equitable services and gave the district appropriate notice of her intent to unilaterally obtain special education services at district expense (see Parent Exs. C; E).

Among the factors that may warrant a reduction in tuition based on equitable considerations is whether the frequency of the services or the cost for the services was excessive (M.C., 226 F.3d at 68; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K., 674 Fed. App'x at 101; E.M., 758 F.3d at 461 [noting that whether the amount of the private school tuition was reasonable is one factor relevant to equitable considerations]). The IHO may consider evidence regarding whether the rate charged by the private school or agency was unreasonable or regarding any segregable costs charged by the private school or agency that exceed the level that the student required to receive a FAPE (see L.K. v. New York City Dep't of Educ., 2016 WL 899321, at *7 [S.D.N.Y. Mar. 1, 2016], aff'd in part, 674 Fed. App'x 100).

Here, the IHO determined that the parent's requested rate for SETSS funding was "excessive" for two reasons. The first concerned the certification of the SETSS provider, but as set forth above that criteria would run to the question of appropriateness and has already been decided authoritatively in favor of parents, and the SETSS services were otherwise held by the IHO to be appropriate (IHO Decision at pp. 6-7). The second basis relied upon evidence outside the hearing record. The IHO cited a document titled "Tuition Rate Setting Methodology for 2022-23 Rates for School-Age Providers Serving Students with Disabilities" for the proposition that the "reimbursement rates by the New York State Education Department for reimbursement of providers for students with disabilities limits overhead expense reimbursement to 30% of the total reimbursed amount" (see id. at pp. 7, n.2). The "tuition Rate Setting" document was not presented as evidence by either party or the IHO, there was no discussion of the document on the record during the impartial hearing and neither party was given notice that the IHO would take judicial notice of such documents or intended to rely on the information in the document for any findings

in the decision. Thus, the IHO failed to give the parent an opportunity to be heard on the information in the document, and instead unfairly surprised the parent and conducted that aspect of the matter in a manner inconsistent with due process.[7] Furthermore, the IHO pointed out that the document was not binding on the parent, who entered into a private contract that is in evidence and incurred liability to Future Plus. The IHO did not provide any explanation why the parent's actions in entering into the contract for the private services was unreasonable. In the absence of any documentary or testimonial evidence regarding the reasonableness of the costs of the unilaterally obtained SETSS services, the district's arguments in support of the IHO's decision in this appeal are also without merit, and the district asserts no other ground as to why direct funding should be reduced or denied.

Accordingly, the decision to reduce the direct funding award in this proceeding cannot be upheld. If the IHO was concerned with excessive costs, it would have been permissible for him to instruct the parties to further develop the evidentiary record with respect to that issue and at the very least disclose the 2022-23 tuition setting methodology he intended to rely upon.

VII. Conclusion

Having determined that there were no challenges to the IHO's finding that the parent's unilaterally-obtained SETSS were appropriate, and having found that equitable considerations do not warrant a reduction or denial of relief, the necessary inquiry is at an end.

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

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision dated January 24, 2024 is modified by reversing that portion which denied in part the parent's request for the district to fund unilaterally-obtained SETSS services for the 2023-24 school year; and

IT IS FURTHER ORDERED that the district shall reimburse or directly fund the costs of the unilaterally-obtained SETSS delivered to the student during the entirety of the 2023-24 school year at a rate consistent with the parent's contract for services upon the parent's submission of proof of the student's receipt of SETSS to the district.

Dated: **Albany, New York**
May 2, 2024

JUSTYN P. BATES
STATE REVIEW OFFICER

[7] There was some discussion and testimony during the impartial hearing regarding the portion of the hourly rate for the SETSS that went directly to the provider compared with the amount that was related to the overhead expenses of the providing agency; however, there was no other evidence in the record regarding the typical market costs for unilaterally-obtained SETSS services upon which to make a record-based finding that the costs in this instance were unreasonable (see Tr. pp. 39-42; Parent Exs. F; G).