The University of the State of New York

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

No. 24-129

Application of a STUDENT WITH A DISABILITY, by her 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 Sarah M. Pourhosseini, 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)[1] appeals from the decision of an impartial hearing officer (IHO) which determined that she failed to timely request equitable services from respondent (the district) pursuant to Education Law § 3602-c for the 2023-24 school year and denied her request that the district fund her daughter's private special education services delivered by Kinship Resources (Kinship) and provide

[1] Both the student's mother and an individual designated by the mother as a person in parental relation purport to submit this appeal on the student's behalf and both verified the request for review and answer to cross-appeal (Req. for Rev.; Answer to Cross-Appeal; see Parent Ex. H). The IDEA provides that in addition to a student's natural parents, the term "parent" can include an adoptive parent, foster parent, guardian, an individual acting in the place of a natural or adoptive parent with whom the child lives or an individual with legal responsibility for the student's welfare, or an individual assigned as a surrogate parent (20 U.S.C. § 1401[23]; 34 CFR 300.30[a], 300.519[a]; see 8 NYCRR 200.1[ii]). Pursuant to State regulation, the definition of a parent includes a person in a parental relationship to the child as defined in Education Law § 3212, as well as an individual designated as a person in parental relation pursuant to article 5, title 15-a of the General Obligations Law (8 NYCRR 200.1[ii]). Pursuant to regulation, where more than one individual is qualified to act as the parent, the biological or adoptive parent of the student is presumed to be the parent unless they do not have legal authority to make educational decisions on behalf of the student or a judicial decree identifies a specific person to act as the parent or make educational decisions (34 CFR 300.30[b][1]-[2]; 8 NYCRR 200.1[ii][3]). Thus, as the student's mother has appeared in this appeal and executed all necessary documents for submitting an appeal, the appeal will be deemed as brought by the mother. In addition, for purposes of this decision, "the parent" refers to the student's mother.

compensatory counseling services for the 2023-24 school year. Respondent (the district) cross-appeals alleging additional grounds for denial of the parent's requested relief. 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 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. Further, given the limited information included in the hearing record, a full recitation of the student's educational history is not possible.

A CSE convened on April 9, 2021, found the student eligible for special education as a student with a learning disability, and formulated an IESP for the student with a projected implementation date of April 23, 2021 (see generally Parent Ex. B).[2] The April 2021 CSE recommended that the student receive five periods per week of group special education teacher support services (SETSS) together with one 30-minute session per week of individual counseling services and one 30-minute session per week of group counseling services (id. at p. 9).[3] According to the IESP, the student was "Parentally Placed in a Non-Public School" (id.at p. 12).

The evidence in the record developed at the impartial hearing does not include information regarding any IEP or IESP developed for the student subsequent to the April 2021 IESP. However, with the record on appeal, the district submitted a prior written notice dated July 24, 2023 and, as additional evidence, the parent submitted an IESP, which indicated a CSE meeting convened on July 24, 2023 and recommended SETSS and group and individual counseling services for the student (July 2023 Prior Written Not; SRO Ex. A).[4]

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

[3] 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.

[4] The district provided the July 2023 prior written notice with the hearing record submitted on appeal categorizing it in its certification of the record as a document required to be part of the record by State regulation. State regulation specifically requires that the hearing record shall include, among other things, "the due process complaint notice and any response to the [due process] complaint" (8 NYCRR 200.5[j][5][vi]; 279.9[a]). State and federal regulation provide that, if the school district has not sent a prior written notice to the parent regarding the subject matter of the parent's due process complaint notice, the district shall provide a response to the parent within 10 days of receiving the complaint (8 NYCRR 200.5[i][4][i] see 34 CFR 300.508[e]). It appears that the

On September 11, 2023, the parent signed and initialed a services agreement with Kinship, which provided that the company would "endeavor to provide special education teacher services and/or related services and supports included in the last-agreed upon IEP or IESP, or in accordance with [the student's] pendency mandates or an IHO/SRO final decision" during the 2023-24 school year (Parent Ex. C at p. 1).

In a due process complaint notice, dated September 20, 2023, the parent, through an attorney, alleged that the district failed to provide the student with a free appropriate public education (FAPE) and/or equitable services for the 2023-24 school year (see Parent Ex. A). Specifically, the parent alleged that the CSE failed to consider the full continuum of services for the student and that the district failed to provide the parent with the procedural safeguards notice or a prior written notice (id. at p. 1). In addition, the parent alleged that the district failed to develop and implement an appropriate program and related services to the student (id.). The parent asserted that the district failed to assign qualified service providers with the capacity to deliver the services mandated in the student's IESP and that the parent had been unable to locate providers who would deliver the services "at the [district]-standard published rates" (id. at p. 2). Thus, the parent stated she was "compelled" to arrange for the services "through the utilization of private agencies at enhanced market rates" (id.). The parent requested pendency based on the April 2021 IESP, consisting of five hours per week of SETSS and two 30-minute sessions per week of counseling services (id.). As relief, the parent sought funding of the student's program and services at an enhanced market rate and a bank of compensatory services for those services missed as a result of the district's failure to develop and implement the mandated IESP services (id.).

After a prehearing conference on November 8, 2023, an impartial hearing convened on December 19, 2023 and concluded on February 28, 2024 after three days of proceedings (Tr. pp. 1-83). On November 8, 2023, the IHO issued an interim decision finding the student's pendency consisted of five periods per week of group SETSS, one 30-minute session per week of individual counseling, and one 30-minute session per week of group counseling (Interim IHO Decision). In a final decision dated March 4, 2024, the IHO found that the parent failed request equitable services from the district prior to June 1, 2023, and therefore, the district was not required to provide the student with equitable services for the 2023-24 school year (IHO Decision at pp. 7-8). In particular, the IHO determined that the testimony of the person in parental relation did not show

district interprets these regulations as requiring it to submit the June 2023 prior written notice as part of the hearing record as the district's response to the due process complaint notice. The parent requests that the July 2023 IESP be considered as additional evidence (SRO Ex. A). Generally, documentary evidence not presented at an impartial hearing is considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; see also 8 NYCRR 279.10[b]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]). Although the district argues that such additional evidence should not be considered, the parties generally appear to agree that the occurrence of the July 2023 CSE meeting is relevant to the issues presented on appeal, and for the limited purpose of discussing the effect it has on the issues presented on appeal, the IESP is considered. In the future, the district should present the prior written notice that it purports to relate to the subject matter of the due process complaint notice during the impartial hearing as an exhibit to be entered into evidence, thereby ensuring the parent has an opportunity to address the existence or content of the prior written notice, particularly where, as here, the parent included an allegation in the due process complaint notice that the district failed to provide her a prior written notice (see Parent Ex. A at p. 1).

when or how the district was provided with a request for equitable services for the student and that the testimony of the parent's advocate on the issue was "vague, perfunctory and conclusory, and lacking in credibility" (id. at p. 6). Further, the IHO noted that the document in which the parent designated the person in parental relation was not executed until December 2023, "nearly seven months" after the purported request for equitable services from the district, which rendered the request "invalid" (id. at p. 7). Accordingly, the IHO denied the parent's request for district funding of SETSS services and compensatory counseling services (id. at pp. 7-8).[5]

IV. Appeal for State-Level Review

The parent appeals and the district cross-appeals. The parties' familiarity with the particular issues for review on appeal in the parent's request for review, the district's answer and cross-appeal, and the parent's answer to the cross-appeal is presumed and, therefore, the allegations and arguments will not be repeated. The gravamen of the parties' dispute on appeal is whether the parent complied with the June 1 deadline thus entitling the student to equitable services under New York Education Law § 3602-c. In addition, in its cross-appeal, the district alternatively asserts that the unilaterally obtained services delivered to the student by Kinship during the 2023-24 school year were not appropriate and that equitable considerations weigh against the parent's requested relief.

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]).[6] "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

[5] The IHO found that the parent did incur a legal obligation to pay for the services delivered to the student by Kinship (see IHO Decision at pp. 5-6).

[6] 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]).

"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.).[7] 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

The sole issue to be resolved in this matter is whether the parent complied with the June 1 deadline thus entitling the student to equitable services under New York Education Law § 3602-c. For the reasons that follow I find no reasonable basis to overturn the IHO's decision which denied funding for privately-obtained SETSS and compensatory counseling services for the 2023-24 school year.

The State's dual enrollment statute requires parents of a New York State resident student with a disability who is parentally placed in a nonpublic school and for whom the parents seek to obtain educational services to file a request for such services in the district where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).

In connection with the June 1 notice, the parent offered into evidence a document that was a district form and included a statement that, if the parent wanted his or her child "to continue receiving special education services at that school next school year, [he/she] must mail this form

[7] 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 documents previously available do not currently appear there, having been updated with web-based versions.

or email the information below to the Committee on Special Education (CSE) office indicated below no later than June 1, 2023" (Parent Ex. G). The form was completed with the student's name and the nonpublic school name and location, with a name typed on the parent/guardian signature line and the date of May 30, 2023 (id.). The name that appeared on the May 2023 form was not the parent but was, instead, an individual later designated by the parent as a person in parental relation (compare Parent Ex. G, with Parent Ex. H). It is worth noting that the document designating the person in parental relation was executed in December 2023, approximately six months after the person in parental relation purportedly signed the notice of parental placement (id.).

The IHO discussed the authority of the person in parental relation to act on the parent's behalf on May 30, 2023 given that the designation form was not signed until December 12, 2023 (IHO Decision at p. 7). Reviewing the document, the scope of the designation was "for the purpose of giving or withholding informed consent for evaluation, development of an Individualized Education Program and/or services, placement, and related matters with the [CSE] responsible for my child" (Parent Ex. H at p. 1). The designation was to take effect on the date of execution of the affidavit, which was December 12, 2023, and was set to expire "180 days from the date of execution" (id.). The IHO found that the person in parental relation did not have the authority to act on the parent's behalf on May 30th, and therefore, the June 1 notice was not valid (IHO Decision at p. 7). In arguing that the IHO erred, the parent asserts that Education Law § 3602-c does not require a request for equitable services notice be signed. Education Law § 3602-c(2)(a) does, however, require that the request be submitted in writing by "the parent or person in parental relation." Thus, the IHO did not err in finding that the written notice in the hearing record was not submitted by either a parent or an individual designated as a person in parental relation at the time the form was completed.[8]

Further, the IHO found that the hearing record did not show that the notice was submitted to the district. As the IHO discussed, the person in parental relation testified that she completed the June first notification form but had no recollection of how the notice was provided to the district and was unable to recall if she brought it to the student's school, provided it to the district, or provided it to the parent advocate, and testified that she only did what she was told to do with it (see Tr. pp. 46-48; IHO Decision at p. 6). The parent's advocate then testified that she faxed the notice to the district prior to June 1, 2023 and possibly on May 30, 2023 (Tr. p. 76).[9] The IHO

[8] The parent also asserts that the December 2023 designation "essentially documented the previous relationship between the mother, Student, and [person in parental relation]"; however, the parent cites no authority for the proposition that a designation of a person in parental relation may have retroactive effect. Moreover, other than the May 2023 form to request equitable services, the person in parental relation does not appear to have taken other steps regarding the student's education. For example, the parent's name appears on the September 2023 due process complaint notice and as an attendee at the July 2023 CSE meeting (see Parent Ex. A at p. 1; SRO Ex. A at p. 15).

[9] The district form stated that the notice should be mailed or emailed but did not indicate that the form should be sent via facsimile (Parent Ex. G). Although the advocate testified that she faxed the form, it is unclear to what fax number it was sent, and the parent also provided no transmission confirmation reports that accompany facsimiles to demonstrate successful transmission with a date and time (see, e.g., New York v. Mountain Tobacco Co., 55 F. Supp. 3d 301, 306 [E.D.N.Y. 2014] [noting the sender's receipt of a "facsimile confirmation"]; Mojdeh M. v. Jamshid A., 36 Misc. 3d 1209(A) [N.Y. Sup. Ct. 2012] [describing that the defendant testified that he had

found the parent advocate's testimony to "be vague, perfunctory and conclusory, and lacking in credibility," a finding based on the testimony and the witness's demeanor, and the IHO was "not convinced" that the advocate actually recalled faxing a letter over nine months prior to her testimony (IHO Decision at pp. 6-7). Generally, an SRO gives due deference to the credibility findings of an IHO, unless non-testimonial evidence in the hearing record justifies a contrary conclusion or the hearing record, read in its entirety, compels a contrary conclusion (see Carlisle Area Sch. v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; P.G. v. City Sch. Dist. of New York, 2015 WL 787008, at *16 [S.D.N.Y. Feb. 25, 2015]; M.W. v. New York City Dep't of Educ., 869 F. Supp. 2d 320, 330 [E.D.N.Y. 2012], aff'd, 725 F.3d 131 [2d Cir. 2013]; Bd. of Educ. of Hicksville Union Free Sch. Dist. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 12-076). Here, the hearing record lacks a compelling reason to disturb the IHO's credibility findings as the IHO was in the best position to assess the parent's testimony and neither the documentary evidence nor the hearing record in its entirety justifies a contrary conclusion.

Based on the foregoing, I find no basis to overturn the IHO's finding that the parent failed to provide the district with the required written request for equitable services prior to June 1, 2023.

Next, I shall address the parent's argument that the district impliedly waived the June 1 affirmative defense. A district may, through its actions, waive a procedural defense (Application of the Bd. of Educ., Appeal No. 18-088). The Second Circuit has held that a waiver will not be implied unless "it is clear that the parties were aware of their rights and made the conscious choice, for whatever reason, to waive them" and that "a clear and unmistakable waiver may be found . . . in the parties' course of conduct" (N.L.R.B. v. N.Y. Tele. Co., 930 F.2d 1009, 1011 [2d Cir. 1991]). The parent's reliance on Application of the Board of Education, Appeal No. 18-088 is misplaced. In that appeal, after the June 1 deadline, the CSE decided to create an IESP for the student and began providing services at the student's nonpublic school, which constituted an implied waiver of the deadline (see Application of the Bd. of Educ., Appeal No. 18-088). In this matter, although the CSE apparently did create an IESP for the student, the district did not provide any services to the student during the 2023-24 school year. While delivery of services reflects "clear and unmistakable waiver," it is less clear that the occurrence of a CSE meeting and development of an IESP would, without more, constitute a waiver. For example, to the extent a district was navigating two requirements in tension with one another, i.e., to conduct an annual review to engage in educational planning for a student (see 20 U.S.C. § 1414[d][4][A][i]; 34 CFR 300.324[b][1][i]; see also Educ. Law §§ 3602-c[2][a], 4402[1][b][2]; 8 NYCRR 200.4[f]) versus awaiting a parent's written request for it to "furnish services" (Education Law § 3602-c[2][a]), the occurrence of the meeting might not clearly or unmistakably reflect the district's waiver of the June 1 notice.

Ultimately, however, even if the occurrence of a July 2023 CSE meeting could form a basis for a finding that the district waived the June 1 requirement going forward, the parent did not present this argument during the impartial hearing and, therefore, the hearing record is not developed on the circumstances of the CSE meeting. Although the parent argues on appeal that she did not know about the July 2023 IESP during the impartial hearing, she does not deny that

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the confirmations for 200 facsimiles at home but failed to proffer them at trial]; Serio v. Dwight Halvorson Ins. Servs., Inc., 2007 WL 9701070, at *7 [S.D.N.Y. Oct. 4, 2007] [describing that evidence successfully supporting plaintiff's claims consisted of "three facsimiles, each with a confirmation sheet"]).

she attended the July 2023 CSE meeting, as reflected on the attendance page for the meeting (SRO Ex. A at p. 15). Accordingly, the evidence in hearing record does not support a finding that the district implicitly waived the deadline by its actions taken before or after the deadline.

Based upon the foregoing, I find insufficient basis to disturb the IHO's decision that the district was not obligated to provide the student with equitable services for the 2023-24 school year.

VII. Conclusion

Having determined that the evidence in the hearing record supports the IHO's determinations that the parent did not provide the district with the required written notice for equitable services prior to June 1, 2023, the student is not entitled to equitable services for the 2023-24 school year, and the parent's requested relief for funding of SETSS and compensatory counseling services must be denied.

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

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS DISMISSED.

Dated: **Albany, New York**
July 5, 2024

STEVEN KROLAK
STATE REVIEW OFFICER