The University of the State of New York

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

No. 24-144

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:
Kerben Law Group, PLLC, attorney for petitioner, by Janaya S. Kerben, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, 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 parent) appeals from the decision of an impartial hearing officer (IHO) to the extent it did not order an hourly rate for the awarded special education teacher support services (SETSS) and did not order respondent (the district) to issue a related services authorization (RSA) for the parent to obtain occupational therapy (OT) services for the student during the 2023-24 school year. The appeal must be sustained in part.

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[a]). 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

In this matter, the evidence reflects that on February 7, 2023, a CSE convened and, having found the student eligible for special education as a student with a learning disability, developed an IESP (February 2023 IESP) that included recommendations for the student to receive three periods per week of SETSS in a group and three 30-minute sessions per week of individual OT services (see Parent Ex. B at pp. 1, 9).[1, 2]

In a letter dated May 31, 2023, the parent informed the district that the student would be parentally placed at her own expense for the 2023-24 school year and, therefore, she was requesting that the district deliver the student's special education services to him at the religious, nonpublic school he would be attending (see Parent Ex. C).

On August 9, 2023, the parent executed a contract with EDopt, LLC (EDopt), to deliver "certain services listed in the attached Schedule A," which, as relevant to this appeal, included special education services and OT services ($195.00 per hour, individually; $145.00 per hour, group) for the 2023-24 school year from September 2023 through June 2024 (Parent Ex. E at pp. 1-3).[3]

In a letter dated August 23, 2023, the parent, through her representative, notified the district of her intention to unilaterally obtain services for the student through a private agency at an enhanced market rate in order to provide the student with his mandated special education services for the 2023-24 school year (see Parent Ex. D).

By due process complaint notice, dated September 11, 2023, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2023-24 school year (see Parent Ex. A at p. 1). The parent asserted that the district failed to develop an appropriate program for the student and failed to implement services (id.). In addition, the parent noted that, on February 7, 2023, the district developed a program for the student recommending that he receive three sessions per week of SETSS in a group and three 30-minute sessions per week of individual OT (id. at pp. 1-2). The parent further noted that the district failed to assign providers to deliver the student's services, and she was unable to locate providers who accepted the district's rates (id. at p. 2). As a result, the parent had located and secured providers through an agency to deliver the student's mandated services at an enhanced rate (id.).[4]

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[1] 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]).

[2] At the time of the February 2023 CSE meeting, the student was in fourth grade and attended a religious, nonpublic school (see Parent Ex. B at p. 1). According to the February 2023 IESP, it appears that the student was last evaluated in July 2022, when a neuropsychological evaluation was conducted at the parent's request (id.).

[3] EDopt 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).

[4] The parent also requested pendency services for the student, noting that the February 2023 IESP was the last agreed-upon program and formed the basis for the student's pendency services, which consisted of three sessions

As relief, the parent requested an order directing the district to directly fund the costs of the student's SETSS and OT services at an enhanced rate for the 2023-24 school year, award all related services in the student's IESP, and award compensatory educational services in a bank as make-up services for any mandated services not provided by the district (see Parent Ex. A at p. 3).

On September 29, 2023, the district executed a pendency implementation form, indicating that the student's February 2023 IESP formed the basis for pendency services, which consisted of three periods per week of SETSS in a group and three 30-minute sessions per week of individual OT (see Pendency Impl. Form).

On October 11, 2023, the parties proceeded to an impartial hearing, which concluded on December 18, 2023 after three days of proceedings (see Tr. pp. 1-40). At the impartial hearing, the district's attorney did not enter any documentary or testimonial evidence into the hearing record (see Tr. pp. 19-20, 22). In addition, the district's attorney waived the opportunity to present an opening statement framing the issues in this matter or otherwise explaining its position (see Tr. p. 20).

Next, the parent's attorney briefly outlined the issues before the IHO in an opening statement (see Tr. pp. 20-22). With respect to relief, the parent's attorney stated that the parent sought an order awarding "direct funding" to the selected provider (EDopt) at the contracted rate of $195.00 per hour, "[o]r at the market rate that the IHO would feel comfortable offering this provider," "[o]r any rate that [the provider] would previously have gotten in the last six months to a year" (Tr. p. 22).

After the parent's attorney delivered her opening statement, the IHO asked the district's attorney whether the district was waiving its burden to establish that it offered the student equitable services, and in response, the district's attorney stated that it was not, and further posited that the parent was not entitled to the relief she sought because the parent failed to notify the district that she was requesting services prior to June 1st (see Tr. p. 22). The district's attorney continued to argue this point, and then additionally noted that the hearing record lacked evidence that the "services were actually provided" (Tr. pp. 22-25). After further discussions about the parent's letter seeking equitable services, the issue was resolved in the parent's favor when the parent testified (see Tr. pp. 25-35).

Based on the parent's testimony, the student was receiving SETSS at his religious, nonpublic school; however, the parent could not provide the SETSS provider's name or state the frequency or duration of the SETSS delivered to the student (see Tr. pp. 36-37). The parent also did not know what the SETSS provider worked on with the student or the qualifications of the SETSS provider (see Tr. pp. 37-38). The parent did not know whether the student received SETSS individually or in a group (see Tr. p. 38). When asked what services EDopt provided to the student, the parent testified that the agency "said that they were going to provide SETSS" to the student

per week of SETSS in a group and three 30-minute sessions per week of individual OT (see Parent Ex. A at pp. 2-3).

(Tr. p. 36). The parent was not asked any questions pertaining to whether EDopt was delivering OT services to the student or whether the student was receiving OT services (see Tr. pp. 29-38).[5]

The parent submitted a closing brief to the IHO, dated January 18, 2024 (see generally Parent Post-Hr'g Br.). The parent requested the following as relief: an order directing the district to directly fund the costs of the student's SETSS, at a rate not to exceed $195.00 per hour, for the 2023-24 school year; and an order directing the district to directly fund the costs of the student's OT services, at a rate not to exceed $195.00 per hour, for the 2023-24 school year (id. at p. 3).[6]

In a decision dated March 17, 2024, the IHO found that the district failed to sustain its burden to establish that it offered the student a FAPE for the 2023-24 school year, and that under the totality of circumstances, the parent sustained her burden to establish that the unilaterally-obtained services were appropriate for the student (IHO Decision at pp. 3-9). With regard to equitable considerations, the IHO determined that the parent did not impede the district's obligation to offer the student a FAPE and she attended and participated in the CSE meeting (id. at p. 8). As a result, the IHO found that equitable considerations weighed in favor of the parent's requested relief and, therefore, the IHO granted the parent's request for services for the 2023-2024 school year as follows: three sessions per week of SETSS in a group and three 30-minute individual session per week of OT (id.).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred by failing to issue an hourly rate for the services awarded. The parent contends that an SRO has the discretion to modify an IHO's decision when "an inadvertent omission or a typographical mistake" has been made by an IHO. In support of this argument, the parent points to a decision issued in Application of a Student with a Disability, Appeal No. 23-277. As relief, the parent seeks an order modifying the IHO's inadvertent omission of an hourly rate and directing the district to fund the student's SETSS at the contracted rate of $195.00 per hour and for the district to issue an RSA for related services.

In an answer, the district responds to the parent's allegations and generally argues to uphold the IHO's decision. The district asserts that the parent is not aggrieved by the IHO's decision and the IHO ordered the exact relief the parent sought: three sessions per week of SETSS in a group and three 30-minute sessions per week of individual OT. Additionally, the district contends that the parent now fails to offer any evidence that the IHO's decision is incapable of implementation as written, and, if issues arise with its implementation, then the parent's avenue of recourse is through the State complaint process or other judicial means. The district further contends that, despite the parent's assertion that the absence of an hourly rate constituted an inadvertent omission, there is no indication that the IHO intended to grant a specific hourly rate but otherwise failed to do so. As a final point, the district asserts that although the parent requests the issuance of an RSA

[5] The parent did not submit any direct testimony via affidavit in this matter (see generally Tr. pp. 1-40; Parent Exs. A-E; Parent Post Hr'g Br.). Similarly, the parent did not offer any testimony, live or via affidavit, from EDopt, the student's SETSS provider, or from any individual allegedly delivering OT services to the student during the 2023-24 school year (see generally Tr. pp. 1-40; Parent Exs. A-E; Parent Post Hr'g Br.).

[6] The district did not submit a closing brief to the IHO.

to obtain related services for the student, the parent did not request this relief prior to the appeal, but rather, had requested funding for the student's OT services. As a result, the district asserts that the parent's request for an RSA, as well as her entire appeal, must be dismissed.

The parent submitted a reply to the district's answer.[7]

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]).[8] "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.).[9] Thus, under State law an eligible New

[7] The parent prepared, served, and filed a reply to the district's answer in this case. However, State regulation limits the scope of the parent's reply to "any claims raised for review by the answer . . . that were not addressed in the request for review, to any procedural defenses interposed in an answer . . . or to any additional documentary evidence served with the answer" (8 NYCRR 279.6[a]). In this instance, the district's answer does not include any of the necessary conditions precedent triggering the parent's right to compose a reply. As such, the parent's reply fails to comply with the practice regulations and neither the contents of the reply nor the additional documentary evidence submitted with the reply will be considered.

[8] 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]).

[9] 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

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

Overall, neither party's arguments are particularly persuasive with regard to the issue presented on appeal. This may be due to the fact that the IHO's award and ordering clauses evade identification as either compensatory educational services for services not implemented, or as the relief specifically sought by the parent, that is, direct funding for unilaterally-obtained services but without specifying the rate for those services (see IHO Decision at p. 8).

Putting aside the lack of clarity in the IHO's award, the parent's argument characterizing the IHO's failure to assign a specific rate for the SETSS as an inadvertent omission or a typographical error is not supported by any facts in the hearing record or on appeal. Contrary to the parent's assertion, the SRO's decision in Application of a Student with a Disability, Appeal No. 23-277 is distinguishable from the instant matter. In that appeal, the hearing record included additional evidence confirming the IHO's original intent and offered insight into the inadvertent omission (see Application of a Student with a Disability, Appeal No. 23-277). For example, the IHO had issued an amended decision in an attempt to make corrections, and thereafter, the parties exchanged a chain of emails calling attention to additional issues with the decision; on appeal, the parties agreed that the IHO's decision included an inadvertent omission and agreed to a modification (id.). Here, there is no amended decision, no emails seeking to clarify any mistakes or inadvertent omissions, and no agreement between the parties to a modification on this basis.[10] Consequently, the parent's argument must be dismissed.

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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.

[10] To be clear, an IHO lacks the authority to retain jurisdiction and materially alter a final decision (see Application of a Student with a Disability, Appeal No. 22-107; Application of a Student with a Disability, Appeal No. 21-067; Application of a Student Suspected of Having a Disability, Appeal No. 19-010; Application of the Dep't of Educ., Appeal No. 17-009; but see Application of a Student with a Disability, Appeal No. 21-152). Rather, the

On the other hand, the district's assertion that the parent is not aggrieved by the IHO's failure to order an hourly rate for services is also inaccurate. The evidence in the hearing record establishes that the parent, in her due process complaint notice, sought an award ordering the district to directly fund the costs of the student's SETSS and OT services at an enhanced rate for the 2023-24 school year (see Parent Ex. A at p. 3). At the impartial hearing, the parent's attorney reiterated the relief sought, namely, an order awarding "direct funding" to the selected provider, EDopt, at the contracted rate of $195.00 per hour, "[o]r at the market rate that the IHO would feel comfortable offering this provider," "[o]r any rate that [the provider] would previously have gotten in the last six months to a year" (Tr. p. 22). And in the closing brief to the IHO, the parent requested an award of direct funding for SETSS and related services for the 2023-24 school year at the contracted rate of $195.00 per hour (see Parent Post Hr'g Br. at pp. 1, 3). As a result, the IHO's decision to award SETSS and OT services in the frequency and duration set forth in the February IESP—without more direction, such as an hourly rate for the services or as a bank of hours of compensatory educational services—is a hollow victory, regardless of whether the parent has additional avenues to enforce the implementation of the award. Therefore, the fact that the parent did not receive all of the relief she sought precludes a determination that the parent was not aggrieved by the IHO's decision and award.

As an alternative form of relief, the parent requests that the matter be remanded to the IHO to issue the contracted rate of $195.00 per hour. However, although SROs are authorized to remand matters back to an IHO to take additional evidence or make additional findings, a review of the hearing record demonstrates that this avenue is unwarranted (see 8 NYCRR 279.10[c]). This is especially true where, as here, the hearing record includes sufficient, unrebutted evidence establishing that the parent is entitled to an order directing the district to directly fund the costs of the unilaterally-obtained SETSS at the contracted rate of $195.00 per hour. For example, it is undisputed that the district failed to implement the SETSS and OT services recommended in the student's February 2023 IESP, and now on appeal, neither party disputes the IHO's findings that the district failed to meet its burden to establish that it provided the student with equitable services, that the parent's unilaterally-obtained services were appropriate, and that equitable considerations did not bar relief in this matter (compare IHO Decision at pp. 6-8, with Req. for Rev., and Answer). At the impartial hearing, the district's attorney objected to the parent's relief for the unilaterally-obtained services on the basis that the parent failed to timely notify the district that she was requesting equitable services prior to the June 1st deadline and then later objecting because the hearing record lacked evidence that the "services were actually provided" (Tr. pp. 22-25). On appeal, the district has not argued either as grounds for denying the parent's requested relief (see generally Answer).

In addition, it is further undisputed that the evidence in the hearing record demonstrates that the parent executed a contract with EDopt to deliver SETSS and OT services to the student during the 2023-24 year at the contracted rate of $195.00 per hour (see generally Parent Ex. E).

IDEA, the New York State Education Law, and federal and State regulations provide that an IHO's decision is final unless appealed to an SRO (20 U.S.C. § 1415[i][1][A]; Educ. Law § 4404[1][c]; 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]). As a reminder, IHOs should not issue amended decisions of a different date to correct what IHOs may view as typographical errors. Having multiple IHO decisions of different dates leads to confusion and contravenes statutory and regulatory provisions that provide an IHO's decision is final unless appealed to an SRO (see 20 U.S.C. § 1415[i][1][A]; Educ. Law § 4404[1][c]; 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

The district does not now argue that the contract is invalid or that the contracted hourly rate is excessive or unreasonable (see generally Answer).

Thus, in light of the foregoing, and having independently reviewed the evidence in the hearing record, it appears that the IHO merely ignored the evidence—and more specifically, the parent's contract with EDopt and the plain language contained therein identifying the hourly rates for SETSS—when he ordered relief in this matter (see generally IHO Decision). As discussed above, the evidence establishes that the parent is legally obligated to pay EDopt for SETSS delivered to the student during the 2023-24 school year. As the Second Circuit Court of Appeals has held that a direct payment remedy is an appropriate form of relief in some circumstances, and that "[i]ndeed, where the equities call for it, direct payment fits comfortably within the Burlington–Carter framework" (E.M. v. New York City Dep't of Educ., 758 F.3d 442, 453 [2d Cir. 2014]; see also Mr. and Mrs. A. v. New York City Dep't of Educ., 769 F. Supp. 2d 403, 430 [S.D.N.Y. 2011] [finding it appropriate to order a school district to make retroactive tuition payment directly to a private school where equitable considerations favor an award of the costs of private school tuition but the parents, although legally obligated to make tuition payments, have not done so due to a lack of financial resources]), there is no reason not to direct the district to fund the contracted for services.

According to the contract, obligating the parent to pay for the SETSS delivered to the student during the 2023-24 school year, EDopt charged $195.00 per hour for individual SETSS (see Parent Ex. E at p. 3). As there is adequate proof that the parent is obligated to pay for the SETSS delivered to the student for the 2023-24 school year at the rates set forth in the contract, the IHO erred by failing to order the district to fund the SETSS at the hourly rates specified in the contract.

On appeal, the parent does not request an order for the district to fund OT services delivered by EDopt. Instead, the parent requests an RSA to obtain the OT services for the student. It is worth noting that this request is for a different form of relief from the request for unilaterally-obtained SETSS. As noted above, EDopt delivered SETSS to the student during the 2023-24 school year and the parent seeks funding for services delivered; however, as is now apparent on appeal, the student has not received OT services during the 2023-24 school year as the parent is now seeking prospective relief, which fits in more as a compensatory remedy.[11] In this instance, the parent's request must be denied as the parent has not provided a sufficient reason to depart from the award already ordered by the IHO with respect to OT services.

Generally, State regulations provide that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and orders to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). Additionally, the request for review "must conform to the form requirements in section 279.8 of this Part" (8 NYCRR 279.4[a]).

[11] The hearing record is devoid of evidence to establish that the student is receiving, or has received, any OT services through either the EDopt contract or through any other provider, during the 2023-24 school year (see generally Tr. pp. 1-40; Parent Exs. A-E; Parent Post Hr'g Br.; Req. for Rev.).

In relevant part, Section 279.8 of the State regulations requires that a request for review shall set forth:

> (2) a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately, and identifying the precise rulings, failures to rule, or refusals to rule presented for review; and
>
> (3) citations to the record on appeal, and identification of the relevant page number(s) in the hearing decision, hearing transcript, exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number.

(8 NYCRR 279.8[c][2]-[3]).

As part of the parent's post-hearing brief, the parent requested that the IHO award district funding of both SETSS and OT services pursuant to the parent's contract with EDopt (Parent Post-Hr'g Br.). With respect to both services, the IHO granted "the parents' application" (IHO Decision at p. 8). However, on appeal, while the parent's request for modification of the IHO's order regarding SETSS was in line with what the parent requested during the hearing, the parent's request for a modification of the IHO's order regarding OT services bears no relationship to the relief that was requested during the hearing. Additionally, the parent fails to identify any basis for challenging the IHO's award of OT services and presents no evidence to support an order directing the district to now issue an RSA—as opposed to directly funding OT services pursuant to the parent's contract with EDopt. Consequently, the parent's request for an RSA for OT services must be dismissed.

VII. Conclusion

Having determined that the hearing record contains sufficient evidence to modify the IHO's decision awarding SETSS to the student to include the contracted hourly rate of $195.00 per hour, but does not contain sufficient evidence to order the district to issue an RSA to obtain OT services for the student for the 2023-24 school year, the necessary inquiry is at an end.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the IHO's decision, dated March 17, 2024 is modified to provide that the district shall directly fund the costs of up to three periods per week of SETSS delivered to the student by EDopt at a rate not to exceed $195.00 per hour, after the parent presents proof of attendance and invoices for the delivery of SETSS to the student during the 2023-24 school year.

Dated: **Albany, New York**
June 24, 2024

STEVEN KROLAK
STATE REVIEW OFFICER