The University of the State of New York

The State Education Department
State Review Officer
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No. 24-247

Application of a STUDENT WITH A DISABILITY, by her parents, 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:
Brain Injury Rights Group, Ltd., attorneys for petitioners, by Edward Lent, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Brian Gauthier, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which dismissed the due process complaint with prejudice on statute of limitations grounds. The appeal must be dismissed.

II. Overview—Administrative Procedures

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

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

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

III. Facts and Procedural History

Given the limited nature of the issue on appeal and the sparse hearing record underlying the impartial hearing in this matter, a detailed recitation of the student's educational history is not necessary.

Turning to the procedural history and commencement of this proceeding, the parents filed a due process complaint notice dated January 2, 2024 (IHO Ex. I). Rather than challenge the student's educational program or placement, the parents sought additional relief related to a previously adjudicated denial of FAPE to the student for the 2018-19 school year (see generally IHO Ex. I). Specifically, the parents stated that, on June 5, 2018, a CSE met for the purpose of developing an IEP for the student for the 2018-2019 school year (id. at p. 2). The parents disagreed

with the recommended 12:1:4 special class placement, a change in the student's disability classification from traumatic brain injury to multiple disabilities, and a reduction in related services, among other issues, and thereafter filed a due process complaint dated July 9, 2018 challenging the student's IEP for the 2018-19 school year (id.).

In a decision dated June 5, 2019, the IHO, in the initial proceeding, dismissed the parents' complaint finding that the district offered the student a FAPE for the 2018-19 school year (see Application of a Student with a Disability, Appeal No. 19-058). The matter was then appealed to the Office of State Review, which resulted in a decision finding that the IHO had erred in finding that the district offered the student a FAPE, but which declined to award relief as there had not been an appeal of adverse factual findings related to the appropriateness of iBrain and equitable considerations (id.). Next, the parents appealed to federal district court, at which point the court found that neither the IHO nor the SRO fully analyzed the appropriateness of iBrain and equitable considerations and remanded the proceeding back to the IHO for further proceedings (see IHO Ex. III at pp. 49-62). Finally, in a decision dated October 6, 2021, the IHO in the initial proceeding addressed the remanded issues and determined that the unilateral placement of the student at iBrain was appropriate and that equitable considerations supported an award of funding for the costs of the unilateral placement (IHO Ex. II at pp. 16-43). Relevant to this proceeding, the IHO also addressed tuition funding, determining that in order to receive direct funding of the costs of the student's tuition, the parents were required to prove that they did not have the financial resources to front the costs of tuition (id. at pp. 34-35). The IHO determined that the parents did not meet this burden and that, "[t]herefore, a finding of direct funding is not supported" and the IHO awarded the parents funding of the costs of the student's tuition, related services, and transportation "via reimbursement" (id. at pp. 36-39).

Turning back to the current proceeding, the parents asserted that after they received this decision and order in their favor, the district failed to provide payment of the relief awarded to the parents (IHO Ex. I at p. 2). The parents further asserted that on December 16, 2021, they filed an action in federal court seeking to enforce the IHO's decision (id.). The parents state that in response to their federal action, the district claimed that it had "'not fully funded all reimbursement costs associated with [the student's] 2018-2019 school year because [the parents] ha[d] not provided necessary documentation of these costs'" (id.). The parents alleged that due to the district's refusal to pay any of the awarded educational costs absent evidence the parents had expended funds to pay for those costs in the first instance, they were "forced to apply for and obtain loans to 'front' the costs of the academic and related services [the student] received during the 2018-2019 school year" (id. at p. 3).

Specifically, the parents alleged that on September 12, 2022, they obtained a loan for $222,398.64, inclusive of loan-related fees, to cover the cost of the student's tuition during the 2018-2019 school year (IHO Ex. I. at p. 3). The parents also alleged that they received a second loan for $137,918.00, inclusive of loan-related fees, to cover the cost of the student's special transportation for the 2018-2019 school year (id.). The parents noted that the loans carried an 8.5% interest rate and a 7% prepayment penalty (id.). The parents alleged that pursuant to the loan agreements, $26,853.35 remained unpaid for the tuition loan, and $16,485.00 remained unpaid for the transportation loan (id.). The parents further alleged that "these costs represent the amounts for which [they] are obligated to pay for the two (2) loans to cover their costs for tuition and related

services, including transportation, for the 2018-2019 school year" and these costs were "accruing additional interest" (id.).

The parents asserted that on February 3, 2023, the district completed its review of the documentation submitted by the parents demonstrating their expenditures for tuition and related services at iBrain for the 2018-19 school year "and processed payments for tuition and transportation services" but "failed to reimburse [the parents] for the costs incurred in obtaining loans to pay for these services" (IHO Ex. I at p. 3).

The parents asserted that they thereafter filed a motion for partial summary judgment in their pending federal action "specifically seeking repayment of the cost of obtaining the two (2) loans" (IHO Ex. I at p. 3).

In a decision dated December 20, 2023, the court determined that it did not have jurisdiction over the parents' request for funding for the costs of their loan expenses because the parents did not exhaust their administrative remedies by appealing from the June 2019 IHO decision which awarded them reimbursement for the costs of the student's tuition, related services, and transportation (IHO Ex. II at pp. 44-59).

Turning back to the due process complaint notice in this proceeding, the parents acknowledged that the December 20, 2023 order from the federal court denied the parents' request for the costs of their loans on the ground that the parents had not exhausted their administrative remedies because they had failed to appeal the initial IHO decision to the Office of State Review; however, the parents asserted that the district court also noted that the parents "could have filed a [due process complaint notice] seeking payment for the costs of the loans" (IHO Ex. I at p. 3).

As relief, the parents sought an order directing the district to pay to the lender the outstanding costs of the two loans obtained by them to fund the student's attendance and transportation at iBrain for the 2018-19 school year, or alternatively, to pay the parents directly for the outstanding costs of the two loans (IHO Ex. I at p. 4).

The parties convened for a prehearing conference on February 5, 2024 and discussed both res judicata and the statute of limitations as potential threshold issues in this matter and the IHO set a schedule for the district to make a motion and for the parent to submit a response (Tr. pp. 1-34).

On March 8, 2024, the district moved to dismiss the due process complaint notice on the grounds that their claims related to the 2018-19 school year and were barred both by res judicata and the statute of limitations (IHO Ex. II at pp. 4-14). The parties reconvened for a status conference on March 13, 2024 (Tr. pp. 35-45).

On April 1, 2024, the parents opposed the district's motion to dismiss on the grounds that that the parents only "knew or should have known about the [loan fees] claim" on February 3, 2023, the date when the district first provided the parents with an affirmative statement that it would not reimburse the parents for any expenses or fees associated with obtaining the 2022 loans and, therefore, the due process complaint notice was timely (IHO Ex. III at pp. 9-11). The parents also argued that the doctrine of res judicata did not apply because the issue of reimbursement for

the expenses and fees related to the loans was never previously adjudicated by an IHO or federal judge in a prior proceeding (id. at 11-13).

The parties reconvened for a final status conference on April 3, 2024 (Tr. pp. 46-81).

In a decision dated May 5, 2024, the IHO dismissed the due process complaint notice finding that it was time-barred by the two-year statute of limitations applicable to IDEA claims (IHO Decision at pp. 4-9). As an initial matter, the IHO recounted the procedural background that preceded the parents' filing of the 2024 due process complaint notice (id. at p. 3).[1] The IHO noted that the October 6, 2021 IHO decision found the district had denied the student a FAPE for the 2018-19 school year, that iBrain was an appropriate unilateral placement for the student, and ordered the DOE to fund tuition and transportation services for the student's attendance at the unilateral placement for the 2018-19 school year (id.). He further noted that the October 2021 IHO decision directed that any payment would be "'via reimbursement'" (id.). The IHO also stated that the October 2021 IHO decision included a determination that the parents had a "'burden of production or persuasion concerning whether they ha[d] the financial resources to 'front' the costs of the [Private School] and whether they [we]re legally obligated for the [S]tudent's tuition payments'" but failed to meet their burden because they had provided "'[s]cant evidence regarding financial capability'" (id.).

The IHO further noted that on December 26, 2021, the parents filed a subsequent action in the federal district court to "'seek to enforce the favorable [decision] issued by [the] IHO" (IHO Decision at p. 4). The IHO stated that, according to the parents, the district reimbursed the parents for the student's tuition and transportation costs but reimbursement from the district did not include various expenses or fees connected to loans obtained by the parents (id.). The IHO stated that the parents now claim that the loans had associated fees, interest rates applicable to the fees and pre-payment penalties and that the parents had sought repayment of those costs in federal court but were denied relief because they failed to exhaust their administrative remedies (id.).

Reaching the substance of the matter, the IHO determined that "any challenge to the reimbursement funding requirement or raising of additional claims that [the p]arents were not fully compensated needed to be raised within two years of the [October 2021 IHO decision]" (IHO Decision at p. 7). The IHO opined that '[t]he combination of the funding by reimbursement and the specific amount the district was obligated to pay renders any expectation that [the p]arents could automatically seek additional relief unreasonable" and "[s]ince October 2021, [the p]arents knew or should have known that tuition and transportation funding would be based on reimbursement and that a cap was placed on the district's funding obligations" (id.). The IHO reasoned that "[t]he additional 2002 loan expenses and fees were only caused by the funding method required" by the October 2021 IHO decision and, therefore, the parents "were obligated to challenge the reimbursement condition . . . by appealing the action to the Office of State Review" (id.). The IHO determined that parents "waited four years after unilaterally placing [the s]tudent

[1] The IHO noted that because "the parties only provided limited documents from the prior filings with no transcripts or exhibits being offered and only one Federal Court submission being annexed to the briefs . . . many factual statements in the [decision] [we]re based on the factual findings" of the federal judge who presided over the parties' enforcement action, as well as statements of fact contained in the parties' briefs (IHO Decision at p. 3, fn. 14).

at [iBrain], for the 2018-2019 school year, and about one year after the [October 2021 IHO decision], to obtain the 2022 loans to pay for these services" (id.). The IHO further noted that "t]he first attempt to recover the 2022 loan expenses and fees was raised in the 2021 [federal action]" and was denied by the federal court "because [the p]arents did not exhaust their administrative remedies" (id.). Accordingly, the IHO found that because the January 2, 2024 due process complaint notice was filed more than two years after the October 2021 IHO decision was issued, the two-year statute of limitations had expired, barring the parents' claims (id.).

With respect to the issue of res judicata, the IHO stated that because he had found that the statute of limitations barred the parent's due process complaint notice, a determination of the district's res judicata claim was not necessary (IHO Decision at p. 8).

IV. Appeal for State-Level Review

The parents appeal the IHO's dismissal of the due process complaint notice on statute of limitations grounds and also address the district's claim that res judicata was an additional bar to the claims raised in the parents' due process complaint notice and, in an answer, the district argues that the IHO's dismissal of the due process complaint notice should be upheld in its entirety.[2]

V. Applicable Standards

VI. Discussion - Res Judicata

On appeal, the parents continue to argue that the claims contained in the due process complaint did not accrue until February 3, 2023, the date when the parents were informed by the district that it would only reimburse the parents the sums certain for tuition and special transportation as awarded in the October 2021 IHO Decision. The district argues to uphold the IHO's determination that the parents' claims accrued at the latest on November 15, 2021, the final day on which they could have served an appeal of the October 2021 IHO Decision and challenged the IHO's finding that they were not entitled to direct payment of the awarded relief.

The IDEA provides that a claim accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint and requires that, unless a state establishes a different limitations period, the party must request a due process hearing within two years of that date (20 U.S.C. § 1415[f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2], 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114-15 & n.8 [2d Cir. 2008]; M.D. v. Southington Bd. of Educ., 334 F.3d 217, 221-22 [2d Cir. 2003]).[1] Because an IDEA claim accrues when the parent knew or should have known about the claim, "determining whether a particular claim is time-barred is necessarily a fact-specific inquiry" (K.H. v. New York City Dep't of Educ., 2014 WL 3866430, at *16 [E.D.N.Y. Aug. 6, 2014]; see K.C. v. Chappaqua Cent. Sch. Dist., 2018 WL 4757965, at *14 [S.D.N.Y. Sept. 30, 2018] [collecting cases representing different factual scenarios for when a

[2] Although the district served and filed a document labeled "Verified Answer and Cross Appeal," review of the document as a whole shows that it does not contain a cross-appeal in that it does not identify any precise rulings, failures to rule, or refusals to rule of the IHO of which the district seeks review (see 8 NYCRR 279.8[c][2]); accordingly, for purposes of this decision, the pleading will be referenced as the district's answer.

parent may be found to have known or have had reason to know a student was denied a FAPE]). Further, two exceptions to the statute of limitations may apply to the timelines for requesting impartial hearings. The first exception applies if a parent was prevented from filing a due process complaint notice due to the district withholding information from the parent that the district was required to provide under the IDEA (20 U.S.C. § 1415[f][3][D][ii]; 34 CFR 300.511[f][2]; 8 NYCRR 200.5[j][1][i]). A second exception may apply if a parent was prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]).

Related to the statute of limitations defense, in this instance, the district further argues that the IHO should have found the claims in the due process complaint to be barred by the doctrine of res judicata.

It is well-established that the doctrine of res judicata and the related doctrine of collateral estoppel apply to administrative proceedings when the agency acts in a judicial capacity (see K.C. v. Chappaqua Cent. Sch. Dist., 2017 WL 2417019, at *6 [S.D.N.Y. June 2, 2017]; K.B. v. Pearl River Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012]; Schreiber v. E. Ramapo Cent. Sch. Dist., 700 F. Supp. 2d 529, 554-55 [S.D.N.Y. 2010]; Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *6 [N.D.N.Y. Dec. 19. 2006]). The doctrine of res judicata (or claim preclusion) "precludes parties from relitigating issues that were or could have been raised in a prior proceeding" (K.B., 2012 WL 234392, at *4; see Perez v. Danbury Hosp., 347 F.3d 419, 426 [2d Cir. 2003]; Murphy v. Gallagher, 761 F.2d 878, 879 [2d Cir. 1985]; Grenon, 2006 WL 3751450, at *6). Res judicata applies when: (1) the prior proceeding involved an adjudication on the merits; (2) the prior proceeding involved the same parties or those in privity with the parties; and (3) the claims alleged in the subsequent action were, or could have been, raised in the prior proceeding (see K.B., 2012 WL 234392, at *4; Grenon, 2006 WL 3751450, at *6).

As an initial matter, the parents assert that the "contested issues herein are not the underlying facts or determinations of the [October 2021 IHO Decision], but the manner in which the [October 2021 IHO Decision] was sought to be enforced" (Req. for Rev. at ¶ 29). Based on that assertion, the parents assert that the accrual date of their claims "should be February 3, 2023, the date on which the [district] denied the [p]arents' claim for full reimbursement of [the student's] tuition and transportation costs" (id. at p. 30). However, it is well settled that neither IHOs nor SROs have authority to enforce prior decisions rendered by administrative hearing officers (see Educ. Law §§ 4404[1][a]; [2]; see, e.g., A.R. v. New York City Dep't of Educ., 407 F.3d 65, 76, 78 n.13 [2d Cir. 2005] [noting that IHOs do not retain jurisdiction to enforce their orders and that a party who receives a favorable administrative determination may enforce it in court]; A.T. v. New York State Educ. Dep't, 1998 WL 765371, at *7, *9-*10 & n.16 [E.D.N.Y. Aug. 4, 1998] [noting that SROs have no independent "administrative enforcement" power and granting an injunction requiring the district to implement a final SRO decision]). Likewise, the Second Circuit has held that a due process proceeding is "not the proper vehicle to enforce the settlement agreement" (H.C. v. Colton-Pierrepont Cent. Sch. Dist., 341 Fed. App'x 687, 689-90 [2d Cir. July 20, 2009]; see A.R. v. New York City Dep't of Educ., 407 F.3d 65, 78 n.13 [2d Cir. 2005]; see also Honeoye Cent. Sch. Dist. v. S.V., 2011 WL 280989, at *3-*5 [W.D.N.Y. Jan. 26, 2011]). Accordingly, to the extent that the parents' underlying claims relates to enforcement of the October 2021 IHO decision, such claims are outside the jurisdiction of this administrative process.

Additionally, it is axiomatic that an IHO's decision is final and binding upon the parties unless appealed to a State Review Officer (34 CFR 300.514[a]; 8 NYCRR200.5[j][5][v]). Accordingly, the parents may not seek enforcement of the October 2021 IHO Decision through due process, nor may they seek to alter or amend the directives included as part of the IHO's decision.

The language in the December 22, 2023 decision of the district court dismissing the parent's motion for partial summary judgment with respect to the parents' claim that they should be awarded the costs associated with the loans they obtained in September 2022 and October 2022 is particularly instructive with respect to the determination of this appeal. At the outset, the court noted that the October 2021 IHO decision awarded the parents funding for tuition and transportation related expenses "via reimbursement" and that "[n]either party appealed the IHO's order" (IHO Ex. II at p. 51). The court further noted that after failing to appeal, the parents commenced an action in federal court seeking emergency relief (id.). According to the court, on February 3, 2023, the district completed its review of the documentation and processed the payments for reimbursement of the tuition and transportation costs awarded to the parents, but such reimbursement did not include any of the related costs of the loans obtained by the parents (id. at pp. 52-53). On the motion then in front of the court, the parent was "seek[ing] an order requiring the [district] to comply fully with the [October 2021 IHO decision]" and "repayment for the remaining balances on the loans obtained" (id. at pp. 45, 52).

In analyzing the parents' claim for costs associated with obtaining loans to pay for the student's 2018-19 school year tuition, the court noted that the parents could not have demanded, in their original due process complaint notice, reimbursement for the purported balances of the loans taken out more than four years later in September 2022, and that the parents had not "sought any other administrative review for the alleged cost of their loans" (IHO Ex. II at p. 56). The court then found that the parents' failure to appeal the October 2021 IHO decision "preclude[d] any challenge to the reimbursement order" (id.). The court noted that although the parents "now claim[ed] the IHO was wrong to conclude that the parents failed to show their financial inability and that the IHO was wrong to impose a remedy of reimbursement to the parents rather than direct funding to [iBrain and Sisters Transportation], which would have obviated the need for a loan," they "never exhausted those claims by raising them with the SRO" (id. at pp. 56-57). As an additional factor, the court noted that the parents had received the entirety of the unappealed reimbursement award by February 3, 2023 and, accordingly, there was "no reason to provide additional funds" to the parents (id. at p. 58).

While the parents have construed the district court's rejection of their claims for additional relief as an invitation to commence a new due process proceeding and return to the administrative forum, I find that the claims contained therein are barred for reasons similar to those found by the district court in its discussion of the parents' failure to exhaust and also as noted by the IHO in his analysis of the application of the two-year statute of limitations to the parents' due process complaint notice in this proceeding. Rather than appealing from the IHO's order, the parents are attempting to obtain different and additional relief for the same underlying set of facts in a subsequent proceeding. While the parents attempt to frame the instant dispute as a stand-alone claim for their loan-related costs and fees, which they attribute to the misfeasance of the district in complying with the October 2021 IHO decision, such allegations cannot be disentangled from the parents' disagreement with the portion of the October 2021 IHO Decision that awarded

reimbursement as opposed to direct payment of the costs associated with the student's attendance at iBrain. Having failed to appeal the October 2021 IHO decision, and after obtaining all relief awarded to them therein, the parents are attempting to bring a new due process complaint notice which, however pled, in effect seeks additional relief for the already-adjudicated district's denial of a FAPE to the student for the 2018-19 school year. Such claims are outside of my jurisdiction as they are an attempt to either implement or modify the October 2021 IHO decision as discussed above.

Finally, even if the parents' allegations were not outside of the jurisdiction of this administrative tribunal, the parents' request for review does not present a sufficient basis for overturning the IHO's finding that the parents' claims would also be barred by the statute of limitations. The different accrual dates arrived at by the district, the parents and the IHO all reflect the same underlying deficiency of the claim. The parent's injury, to the extent one can be found, is not rooted in any IDEA violation attributable to the district, such as the district's denial of a FAPE to the student for the 2018-19 school year that was previously adjudicated, but rather stems from the parents' own failure to appeal that portion of the October 2021 IHO decision which awarded them reimbursement rather than direct funding. As the parents brought this proceeding more than two years after the October 2021 IHO decision, there is no reason to depart from the IHO's determination as to the statute of limitations. Accordingly, I decline to disturb the IHO's decision.

VII. Conclusion

Having determined that the evidence in the hearing record supports the IHO's determination, the necessary inquiry is at an end.

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
August 23, 2024

STEVEN KROLAK
STATE REVIEW OFFICER