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FIRST DIVISION  
March 28, 2016

No. 1-14-3613  
2016 IL App (1st) 143613-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KECIA PORTER,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County
v.	)	
	)	
THE ILLINOIS STATE BOARD OF	)	Nos. 11 CH 11078 &
EDUCATION, STACEY STUTZMAN, as	)	13 CH 04429
Hearing Officer for the Illinois State Board of	)	
Education, and BARBARA BYRD-BENNETT,	)	
as Superintendent for City of Chicago School	)	Honorable
District 299,	)	Sophia H. Hall,
	)	Judge Presiding.
Defendants-Appellees.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

**ORDER**

*Held:* Board of Education's decision to increase  
compensatory services upon remand was not clearly  
erroneous.

¶ 1 Plaintiff Keisha Porter sought administrative review of a decision of the Illinois State Board of Education (ISBE) regarding accommodations made for her minor daughter, K.P. The trial court reversed and remanded the ISBE's order on the issue of compensatory relief. On remand, the ISBE issued an order increasing compensatory relief. Porter moved to vacate that

order and petitioned for judicial review. The circuit court again reversed and remanded the second order to clarify when the compensatory education services were to be provided, for how long, and in what amount. The ISBE clarified its order and the circuit court affirmed the decision. Porter now appeals.

¶ 2

## BACKGROUND

¶ 3 On March 30, 2010, Porter filed a due process complaint with the ISBE pursuant to the Disabilities Education Act (20 U.S.C. § 1401 *et seq.*), requesting the her daughter, K.P., an 11-year-old who was eligible for special education and related services in Chicago Public School District 299 (District), be provided: direct speech/language services and door-to-door transportation with a bus aide to and from her home to the magnet school she attended, transportation costs, and costs of independent psychological and speech/language evaluations. A hearing was held by Stacey Stutzman, the Impartial Due Process Hearing Officer (IHO), and a decision was issued by the ISBE on December 30, 2010. The ISBE determined that the District violated K.P.'s right to a "free appropriate public education" (FAPE) during the period from September 2008 through the time of the hearing, by failing to conduct adequate assessments of all areas of potential disabilities, which resulted in the failure to adequately address K.P.'s learning impediments, communication impairments, and behavioral management. The ISBE also found that the District violated K.P.'s right to a FAPE with regard to speech/language therapy by terminating her speech/language therapy on December 8, 2008, without appropriate assessment, by failing to provide Porter with notice prior to the termination, and by failing to provide K.P. with direct speech/language therapy as a related service since the termination.

¶ 4 The ISBE ordered the District to: (1) reimburse Porter in the amount of \$420 for the independent psychological and speech/language evaluations she secured; (2) provide K.P. with

direct speech/language therapy in the amount of 30 minutes per week, to begin on or before January 14, 2011; (3) pay for one hour per week of direct individual speech/language therapy and four hours per week of direct individual tutoring to be provided outside of school hours by a qualified provider/agency selected by Porter; and (4) provide K.P. with extended school year services designed to address her individual needs in preparation for her seventh grade school year.

¶ 5 Porter filed for judicial review of the ISBE's December 30, 2010, decision. Porter argued that the compensatory services awarded to K.P. failed to provide equitable and fair relief to compensate for the District's violations from 2008 to the present. On March 28, 2012, the trial court found in favor of Porter on the issue of whether or not the compensatory relief in the December 30, 2010, order was sufficient to place K.P. in the position she would have been in if the violations had not occurred. The court reversed and remanded the case to the ISBE for new compensatory relief.

¶ 6 A new IHO, Ann Breen-Greco, was appointed on remand. The IHO noted that the trial court "ordered no additional fact-finding, evaluations, or any supplementation to the record." Thus, the IHO stated that she would rely on the findings of fact, credibility determinations, and conclusions of law from the December 30, 2010, order. The IHO further noted that the trial court's order addressed "new compensatory relief" but did not provide any specific direction on the amount of compensatory relief it believed to be necessary. The IHO stated that it was therefore in her discretion to determine the amount consistent with the trial court's order.

¶ 7 On January 22, 2013, the IHO found that with respect to compensatory services, K.P. should receive the full amount of tutoring and speech/language services the independent evaluators recommended. She noted that the previous IHO ordered one hour less of tutoring per

week than the independent evaluator recommended, and 30 minutes less per week of speech/language therapy than the high end of what the private evaluator recommended. Thus, the IHO found that the total compensatory services should be an additional hour of tutoring or reimbursement of Porter for private tutoring services, and an additional one-half hour of speech and language services per week for the time period of January 14, 2011, to June 17, 2011.

¶ 8 Porter then sought judicial review of the ISBE's remand order. The trial court once again reversed and remanded the order for the IHO "to clarify when the compensatory education services are to be provided; for how long; and in what amount of time per week for each service."

¶ 9 On remand, the IHO noted that she did not order specific dates on which the compensatory services were provided because "that is a decision left to the District and Parent, based on the District's school schedule and the Student's availability." Accordingly, the IHO stated that upon receipt of the order, the District was to contact Porter to set a schedule for providing K.P. with the compensatory services for the time period equivalent to January 14, 2011, to June 17, 2011. The IHO described those services as: one-half hour of speech and language services per week, and tutoring of one hour per week or for reimbursement of a private tutor, but limited to an equivalent amount of time for private tutoring services.

¶ 10 Porter again sought judicial review, but the trial court affirmed the IHO's order on remand. Porter now appeals.

¶ 11 We begin by stating that this case is before us on appeal from a common law writ of *certiorari*, which is used to obtain circuit court review of an administrative decision when the administrative agency's enabling statute does not expressly adopt the Administrative Review Law (the Review Law) (735 ILCS 5/3-101 *et seq.*) (West 2010)), and provides no other method

for reviewing the agency's decisions. *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 332-33 (2009). Our review of a writ of *certiorari* is "essentially the same" as our review of a petition filed under the Review Law. *Id.* at 337. Accordingly, we review the administrative agency's decision, not the circuit court's decision.<sup>1</sup> *Id.* Moreover, our traditional standards of review of administrative decisions apply under these circumstances. *Id.*

¶ 12 The applicable standard of review in each case depends on the question posed on appeal. Here, Porter's chief argument is that the ISBE's decision did not provide sufficient compensatory services to K.P. This is a mixed question of fact and law, which arises when courts are asked to decide whether the established facts satisfy the statutory standard. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 22 Ill. 2d 200, 211 (2008). We apply a clearly erroneous standard of review to mixed questions of fact and law. *Id.* An administrative agency's decision "is deemed clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted). *Id.*

¶ 13 In the case at bar, Porter's chief argument hinges on a misunderstanding of the ISBE's order. Porter contends that the ISBE's most recent order on remand offers less compensatory services than the ISBE's prior order, and is thus clearly erroneous. However, the most recent order from the IHO ordered the District to provide K.P. with tutoring and speech/language services *in addition* to the services that the District had already provided in accordance with the IHO's first order. Specifically, the IHO who entered the most recent order noted that the previous IHO had ordered four hours a week of tutoring from January 14, 2011, to June 17, 2011, which was "one hour less per week than the evaluator's recommendation of tutoring on a daily bases." Accordingly, the second IHO ordered an additional one hour of tutoring, or for

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<sup>1</sup> Because we review the decision of the administrative agency, and not the circuit court, we reject Porter's argument that the circuit court failed to state for the record its reasons for affirming the ISBE order on remand.

reimbursement of the parent, per week for the relevant time period. Additionally, the IHO noted that the previous ISBE order of compensatory services for one hour per week of "direct individual speech/language therapy per week, is a total of one and a half hours per week, which is one half hour less per week than the high end of the private evaluator's recommendation of 60-120 minutes per week." Accordingly, the IHO ordered an additional one-half hour of speech/language services for January 14, 2011, to June 17, 2011. Accordingly, because the IHO increased the amounts of speech/language and tutoring services to the maximum recommended amount, we do not find that the IHO's decision to increase the compensatory services was clearly erroneous.

¶ 14 Moreover, Porter fails to identify on appeal what additional compensatory services she believes K.P. should have been provided. Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) requires an appellant's argument section to contain "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." The purpose of this rule is to require parties to present clear and orderly arguments so that the appellate court may properly ascertain and dispose of the issues involved. *Zadrozny v. City of Colleges of Chicago*, 220 Ill. App. 3d 290, 292-93 (1991). Here, it is unclear what exactly Porter would be requesting upon remand. Accordingly, we find that the IHO's decision was not clearly erroneous.

¶ 15 For the foregoing reasons, we affirm the decision of the administrative agency.

¶ 16 Affirmed.