The University of the State of New York

The State Education Department
State Review Officer
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No. 12-059

Application of the BOARD OF EDUCATION OF THE BRIGHTON CENTRAL SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:
Harris Beach PLLC, attorneys for petitioner, David W. Oakes, Esq., of counsel

Joyce B. Berkowitz, Esq., attorney for respondents

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 district) appeals from the decision of an impartial hearing officer (IHO) which ordered it to reimburse respondents (the parents) for a portion of their son's tuition costs at the Norman Howard School (Norman Howard) for the 2011-12 school year. The parents cross-appeal from the IHO's determination which denied their request for full tuition reimbursement at Norman Howard. The appeal must be dismissed. The cross-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 school 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]; 34 CFR 300.151-300.152, 300.506, 300.511; Educ. Law § 4404[1]; 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 300.514[c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

As discussed more fully below, the merits of the district's appeal need not be addressed because the district has not properly initiated this appeal. Briefly, however, on July 14, 2011, the CSE met for an annual review and to develop an IEP for the 2011-12 school year (Dist. Ex. 5 at p. 1). The CSE found the student eligible for special education programs and related services as a student with a learning disability and recommended integrated co-teaching services for math and science together with two 45-minute sessions of resource room per day (id. at pp. 1, 10).[1] The CSE also recommended related services of two 45-minute sessions of individual counseling per month (id.). The student began attending Norman Howard in September 2011 (Tr. p. 771).

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

Norman Howard has been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (Tr. p. 818; see 8 NYCRR 200.1[d], 200.7).

A. Due Process Complaint Notice

By due process complaint notice dated August 22, 2011, the parents requested an impartial hearing, asserting that the student performs better in a small classroom, that his performance is even better when a special education teacher is in the classroom to assist him, and that Norman Howard maintains these conditions for the student (Dist Ex. 1 at p. 2). The parents alleged that IEPs that had been developed by the district have not been successful in addressing the student's educational needs (id.). More specifically, according to the parents, the district had failed to offer the student an appropriate program that sufficiently addressed his needs for the 2011-12 school year (id. at pp. 1-3).[2] The parents also notified the district that they intended to unilaterally place the student at Norman Howard and were seeking tuition reimbursement (id. at p. 1).

B. Impartial Hearing Officer Decision

The impartial hearing convened on November 1, 2011 and concluded on December 1, 2011, after five days of proceedings (Tr. pp. 1, 266, 604, 812, 860). In a decision dated February 4, 2012, the IHO granted the parents' request for relief in part for the 2011-12 school year, but determined that the amount must be reduced based upon equitable considerations (IHO Decision at p. 46).[3]

IV. Appeal for State-Level Review

On March 22, 2012 the district served a petition and memorandum of law upon the parents and subsequently filed it with the Office of State Review. In its petition, the district asserts that the IHO erred in granting the parents a portion of their requested tuition reimbursement for the 2011-12 school year. Among other things, the district contends that the IHO erred as a matter of law in ordering the district to provide tuition reimbursement to the parents because the IHO was precluded from making an award as, in the district's view, the IHO held that the district offered the

[2] The parents amended their due process complaint notice twice during the impartial hearing (Parent Exs. 16 at p. 1; 18).

[3] Although not entirely clear, the IHO's decision appears to find that the district denied the student a FAPE. With respect to the 2011-12 IEP, the IHO was not persuaded that an integrated class was an "excellent idea" for the student, and she found that the option to receive a Regents diploma was "more illusory than real," and that it was unclear to district personnel how the student's needs would be met in a general education setting; however, the IHO also found that the student had achieved some educational benefit and that the district's efforts were not "entirely inappropriate," and some language in her determinations suggests that the district had provided the student with a basic floor of opportunity to some degree, but not entirely (IHO Decision at pp. 39-43). With respect to Norman Howard, the IHO determined that the program offered at the school correlated well with the student's needs in his IEP, but the IHO went on to note that the Norman Howard reading and literacy instruction was not aligned with the student's instructional level and that there was no evidence that the student's math instructor was sufficiently qualified to provide the student's math instruction (id. at p. 45). The IHO treated the deficiencies in the student's instruction at Norman Howard as "equitable considerations," warranting a reduction of tuition reimbursement for the unilateral placement of the student (id. at pp. 45-46). The IHO issued two versions of the decision that were in essence the same, but for awarding the parents $9,500 in one and $7,800 in the other (see IHO Decisions).

student a free appropriate public education (FAPE) and that the unilateral placement at Norman Howard was not appropriate for the student. In the alternative, the district identified 40 specific factual and legal objections to the IHO's decision, arguing that it offered the student a FAPE during the 2011-12 school year, that the parents' unilateral placement was not appropriate, and that equitable considerations precluded tuition reimbursement. The district also asserts that service of its petition upon the parents was delayed based upon assertions by the parents' counsel that the parents would be initially appealing the IHO's decision and their subsequent failure to do so. Therefore, the district maintains that it has initiated this appeal "at its first opportunity."

In an answer and cross-appeal, the parents assert that the district's petition is untimely, was improperly served, and request that it be dismissed. The parents also assert their view that—contrary to the district's claims—the IHO correctly found that the district failed to offer the student a FAPE and correctly found that the unilateral placement at Norman Howard was appropriate for the student. The parents further argue that the IHO erred in reducing the reimbursement award to the parents and request full tuition reimbursement at Norman Howard.

In response to the parents' answer and cross-appeal, the district alleges, among other things, that any irregularities in serving the petition should be excused because the parents were not prejudiced. The district also submits as additional evidence a pre-petition letter from the district's counsel to the Office of State Review dated March 19, 2012 together with attached e- mail correspondence between the parties concerning the parents' intentions and failure to initiate an appeal.[4] The district also argues that in the event an SRO finds the district's petition to be untimely, the untimeliness should be excused.

Thereafter, the parents submitted a reply that, among other things, denies the allegation that they deceived the district in any respect, and objects to the district's submission of additional evidence.

V. Discussion

A. Additional Evidence

The parents assert that the copy of the district's March 19, 2012 letter with attachments to the Office of State Review included with the district's memorandum of law should be rejected. Generally, documentary evidence not presented at an impartial hearing may be 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 the Dep't of Educ., Appeal No. 08-024; Application of a Student with a Disability, Appeal No. 08-003; Application of the Bd. of Educ., Appeal No. 06-044; Application of the Bd. of Educ., Appeal No. 06-040; Application of a Child with a Disability, Appeal No. 05-080; Application of a Child with a Disability, Appeal No. 05-068; Application of the Bd. of Educ., Appeal No. 04-068). I will accept

[4] In its answer to cross-appeal the district requests that the parents' cross-appeal should be "disregarded and considered null and void" based on the "actions of [the parents] in deceiving [the district] concerning the service of an original appeal by [the parents] to occur on March 15, 2012" (Ans. to Cross-Appeal ¶ A). In light of the circumstances in this matter, I decline to comply with the district's request and will consider the parents' cross appeal as set forth herein.

the additional evidence attached to the district's memorandum of law because the documents were unavailable at the time of the impartial hearing and they directly relate to my decision herein.

B. Timeliness of Appeal

An appeal from an IHO's decision to an SRO is initiated by timely personal service of a verified petition and other supporting documents upon a respondent (8 NYCRR 279.2[b], [c]). Exceptions to the general rule requiring personal service include the following: (1) if a respondent cannot be found upon diligent search, a petitioner may effectuate service by delivering and leaving the petition, affidavits, exhibits, and other supporting papers at respondent's residence with some person of suitable age and discretion between six o'clock in the morning and nine o'clock in the evening, or as otherwise directed by the Commissioner (8 NYCRR 275.8[a]; Application of the Dep't of Educ., Appeal No. 08-056; Application of the Dep't of Educ., Appeal No. 08-006); (2) the parties may agree to waive personal service (Application of the Dep't of Educ., Appeal No. 08-056; Application of the Dep't of Educ., Appeal No. 07-037; Application of the Dep't of Educ., Appeal No. 05-082; Application of the Bd. of Educ., Appeal No. 05-067; Application of the Bd. of Educ., Appeal No. 04-058); or (3) permission is obtained from an SRO for an alternate method of service (8 NYCRR 275.8[a]; Application of the Dep't of Educ., Appeal No. 08-056; Application of a Student with a Disability, Appeal No. 08-022; Application of the Dep't of Educ., Appeal No. 08-006; Application of the Dep't of Educ., Appeal No. 05-082; Application of a Child with a Disability, Appeal No. 05-045; Application of the Bd. of Educ., Appeal No. 01-048).[5]

A parent who seeks review of an IHO's decision by an SRO shall serve upon the school district a notice of intention to seek review (8 NYCRR 279.2[a]). The notice of intention to seek review must be personally served upon the school district not less then 10 days before service of a copy of the petition upon such school district, and within 25 days from the date of the IHO's decision sought to be reviewed (8 NYCRR 279.2[b]). A notice of intention to seek review is not required when the school district seeks review of an IHO's decision (8 NYCRR 279.2[c]). The notice of intention to seek review serves the purpose of facilitating the timely filing of the hearing record by the district with the Office of State Review (Application of a Student with a Disability, Appeal No. 10-038; Application of a Child with a Disability, Appeal No. 04-018).

Additionally, a petition must be personally served within 35 days from the date of the IHO's decision to be reviewed (8 NYCRR 279.2[b]). State regulations expressly provide that if the IHO's decision has been served by mail upon the petitioner, the date of mailing and four days subsequent thereto shall be excluded in computing the period within which to timely serve the petition (8 NYCRR 279.2[b], [c]). The party seeking review shall file with the Office of State Review the petition, and notice of intention to seek review where required, together with proof of service upon the other party to the hearing, within three days after service is complete (8 NYCRR 279.4[a]). If the last day for service of a notice of intention to seek review or any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11). State regulations provide an SRO with the authority to dismiss sua sponte a late petition (8 NYCRR 279.13; see Application of a Student with a Disability, Appeal No. 08-113; Application of a Child with a Disability, Appeal No. 04-003). An SRO, in his or her sole discretion, may excuse a failure

[5] Pursuant to 8 NYCRR 279.1(a), "references to the term commissioner in Parts 275 and 276 shall be deemed to mean a State Review Officer of the State Education Department, unless the context otherwise requires."

to timely seek review within the time specified for good cause shown (8 NYCRR 279.13). The reasons for the failure to timely seek review must be set forth in the petition (id.).

In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the dismissal of a petition by an SRO (8 NYCRR 279.8[a], 279.13; see, e.g., Application of a Student with a Disability, Appeal No. 11-013 [dismissing parent's appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 11-012 [dismissing parents' appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 09-099 [dismissing parents' appeal for failure to timely effectuate personal service of the petition upon the district]; Application of the Dep't of Educ., Appeal No. 08-006 [dismissing a district's appeal for failing to properly effectuate service of the petition in a timely manner]; Application of the Bd. of Educ., Appeal No. 07-055 [dismissing a district's appeal for failure to personally serve the petition upon the parents and failure to timely file a completed record]; Application of the Dep't of Educ., Appeal No. 05-082 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent's former counsel by overnight mail]; Application of the Dep't of Educ., Appeal No. 05-060 [dismissing a district's appeal for failing to timely file a hearing record on appeal]; Application of the Dep't of Educ., Appeal No. 01-048 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent by facsimile]).

In the present case, it is clear that this appeal was not initiated within the timelines prescribed in Part 279 of State regulations. Although the IHO's decision was dated February 4, 2012, both parties agree that the decision was mailed on February 3, 2012 (IHO Decision at p. 46; Answer and Cross-Appeal ¶ 18; Answer to Cross-Appeal ¶ 148). As such, the date of mailing and the four days subsequent thereto are excluded in calculating the 35-day period within which the petition needed to be timely served; therefore, the petition was required to be personally served on the parents no later than March 13, 2012, a Tuesday (8 NYCRR 279.2[c]; see Application of a Student with a Disability, Appeal No. 11-162). The district's affidavit of service attached to the petition states that the petition was personally served upon the parents on March 22, 2012; accordingly, the petition was served nine days late (Dist. Aff. of Service).

However, the district followed procedures for requesting consideration of a late petition by setting forth in the petition the reason that the district believes the delay should be excused. The district's counsel contends that the late service should be excused because the parents' counsel communicated an intention to appeal after the IHO rendered her decision and that the parents' counsel had told him that she intended to serve the district with an appeal on March 15, 2012 (Pet. ¶¶ 79-80).[6] The district further contends that State level appeals decisions that I have previously rendered discourage simultaneous appeals by both a district and a parent, and therefore, the district "had to await parents' appeal" since the parents had served a notice of intention to seek review on March 5, 2012 (Reply ¶ 3[c]; Dist. Mem. of Law Concerning Respondent's Cross-Appeal, Attachments at p.1). The district further contends that the parents' subsequent failure to initiate an appeal was a deception that constitutes good cause to excuse the district's untimeliness in initiating

[6] I note that even if the parents had initiated an appeal by serving the district with a petition on March 15, 2012, as the district alleges the parents counsel "deceived" the district into believing would occur, that petition also would have been untimely (see Reply to Respondents' Answer ¶ 3c).

an appeal. The parents respond that they did not deceive the district and that filing a notice of intention to seek review does not obligate the parents to take the next step and serve a petition.

As an initial matter, I am not persuaded that the district was required to await parents' appeal in this instance due to the State-level appeals decisions identified by the district. Both of the cited cases involved circumstances in which the district and the parents' respective counsels had knowingly awaited the final hours to appeal and simultaneously initiated separate appeal proceedings from the same impartial hearing officer's decision in a timely manner (see Application of a Student with a Disability, Appeal No. 11-059 & 11-061; Application of a Student with a Disability, Appeal No. 10-121 & 10-121; Application of a Student with a Disability, Appeal No. 09-008 & 09-010). Upon notice and an opportunity for the parties to be heard, and as a matter of discretion, the two appeals were consolidated by an SRO and because the parents served a notice of their intention to seek review first, for purposes of those decisions, their requests for review were treated as the initiating appeal and the district's requests for review were deemed cross-appeals (id.), but I warned the parties not to repeat such conduct because it appeared that the purpose of the conduct was to circumvent the page limitations to pleadings in State regulations that are applicable in appeals before an SRO (id.; see 8 NYCRR 279.4[b]; 279.8[a][5]). Although I cautioned the parties in those cases to avoid such procedural irregularities in the future, and noted that "future irregularities may result in the rejection of a respondent's pleading for failure to adhere to the practice regulations and comply with the page limitations set forth in State regulations attendant to setting forth a cross appeal within the answer" (see e.g. Application of a Student with a Disability, Appeal No. 11-059 &11-061 at n. 1), they in no way precluded a party from filing an appeal in the ordinary fashion. Here, unlike in the cases discussed above, neither party in this case filed a timely appeal, nor is there any indication that there was an attempt to circumvent the page limitations in the practice regulations. Accordingly, the prior SRO determinations identified by the district should not have discouraged the district from initiating a timely appeal. In other words, if a district receives a notice of intention to seek review from a parent, nothing in State regulation requires the district to await the deadline for filing an appeal, just to see if the parent will follow though on the promise to commence a proceeding before an SRO. To hold otherwise would encourage parties to engage in unnecessary brinkmanship in the final hours for initiating an appeal or promote delay in an administrative process that is intended to expedient.[7]

If the e-mail assertions of the parents' counsel were the only consideration in this case, I might have been convinced in this instance to accept the district's reasons as good cause for a very short delay.[8] However, I also note that after the parents' appeal failed to materialize, the district,

[7] It should be noted that this statement is offered to further elucidate my rationale and is not intended to suggest that the parties' representatives in this particular case were engaged in brinkmanship, attempts to delay the proceeding, or otherwise trying to circumvent State regulations.

[8] I am persuaded that there was a miscommunication on the part of the parents' counsel insofar as she initially indicated in e-mail that the parents intended to appeal, but that at some point thereafter the parents apparently changed their minds. However, without further evidence, I decline to find that the parents should be estopped from asserting their timeliness argument because their failure to appeal amounted to a wrongdoing or deception that the district was induced by or could justifiably rely upon. Such a determination would be tantamount to a finding of fraud for which I believe there is insufficient support, especially when State regulations do not prevent a district from commencing an appeal in the first instance (see Zumpano v. Quinn, 6 N.Y.3d 666, 673–674 [2006]; Kosowsky v. Willard Mountain, Inc., 90 A.D.3d 1127, 1130 [3d Dep't. 2011]). Instead many of the reasons for the delay and the length of the delay involved matters actually within the control of the district (see generally Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 366 [2d. Cir 2003]).

waited nine days—almost the entire 10-day limitations period for filing a cross-appeal—to serve its initial petition upon the parents. Under the circumstances of this case in which the district had already planned to appeal the IHO's decision, I believe this delay is too long and that it does not constitute good cause for the delay in filing the petition.

In view of the forgoing and under the circumstances of this case, I find that the petition was not served upon the parents prior to the expiration of the time to initiate an appeal and that good cause is not present to accept the late petition (8 NYCRR 279.13; see 8 NYCRR 279.2[c]). Additionally, since the petition was untimely, there is no reasonable basis for considering the parents later cross-appeal and it too must be dismissed (see Application of a Child with a Disability, Appeal No. 05-048; Endicott Johnson Corp. v. Liberty Mut. Ins. Co., 116 F.3d 53, 58 [2d Cir.1997]).

C. Service of the Petition

Even if I had accepted the district's late petition, it would not have altered the outcome in this case. The parents also allege that the district failed to effectuate proper service of the petition and supporting papers. State regulations provides, in pertinent part:

> A copy of the petition, together with all of petitioner's affidavits, exhibits, and other supporting papers… shall be personally served upon each named respondent… between six o'clock in the morning and nine o'clock in the evening…

(8 NYCRR 275.8[a] [made applicable to this proceeding by virtue of 8 NYCRR 279.1[a]]). This provision requires that service be effected within the hours specified in the regulation (Appeal of Hoey, 48 Ed. Dep't Rep. 360, 361-62, Decision No. 15, 886 [dismissing an appeal that was personally served outside the specified time period]; Application of Hennessey, 37 Ed. Dep't Rep. 494, 495-96, Decision No. 13,911 [dismissing an appeal that was personally served outside the specified time period]). The parents each submitted affidavits attesting that they were served at their home after 9:00 in the evening, at approximately 9:10 p.m. (March 30, 2012 Parent Affs.). The district does not contest that service upon the parents occurred after 9:00 in the evening, outside the specified time period (Dist. Reply ¶ 3).[9] Therefore, because the district failed to effectuate proper service upon the parents, the appeal must be dismissed.[10]

VI. Conclusion

Based upon the aforementioned nonconformities with State regulations, including the district's failure to initiate the appeal in a timely manner with proper service, I will exercise my discretion and dismiss the petition, without a determination of the merits of the parties' claims (8 NYCRR 279.13; see 8 NYCRR 279.2[b], [c], 279.11; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *5 [N.D.N.Y. 2009]; Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL

[9] I note that the district's affidavit of personal service of the petition does not specify what time of day the petition was served (see Dist. Aff. of Service).

[10] As noted above, personal service may be waived upon agreement of the parties (see Application of the Dep't of Educ., Appeal No. 07-037; Application of the Bd. of Educ., Appeal No. 04-058). Although the e-mails that the district submitted as additional evidence suggest that parties reached some measure of agreement regarding a method of service upon the parents' counsel, it does not appear that such an agreed upon form of service was attempted.

3751450, at *5 [N.D.N.Y. 2006] [upholding dismissal of a late petition for review where no good cause was shown]; Keramaty v. Arlington Cent. Sch. Dist., 05 Civ. 00006 [S.D.N.Y. Jan. 24, 2006] [upholding dismissal of a petition for review that was served one day late]; Application of a Student with a Disability, Appeal No. 12-042; Application of a Student with a Disability, Appeal No. 11-052; Application of a Student with a Disability, Appeal No. 11-013; Application of a Student with a Disability, Appeal No. 11-012; Application of a Student with a Disability, Appeal No. 10-081; Application of the Bd. of Educ., Appeal No. 10-044; Application of a Student Suspected of Having a Disability, Appeal No. 10-021; Application of a Student with a Disability, Appeal No. 09-099 [noting that attorney miscalculation of the pleading service requirements does not constitute good cause]; Application of a Student with a Disability, Appeal No. 08-148; Application of a Student with a Disability, Appeal No. 08-142; Application of a Student with a Disability, Appeal No. 08-114; Application of a Student with a Disability, Appeal No. 08-113; Application of a Student with a Disability, Appeal No. 08-039; Application of a Student with a Disability, Appeal No. 08-031; see also Jonathan H. v. Souderton Area Sch. Dist., 2008 WL 746823, at *4 [E.D. Pa. 2008], rev'd in part on other grounds 562 F.3d 527 [3d Cir. 2009] [upholding a review panel's dismissal of a late appeal from an IHO's decision]; Matter of Madeleine S. v. Mills, 12 Misc. 3d 1181[A] [Sup. Ct., Alb. County 2006] [upholding a determination by the Commissioner of Education to dismiss an appeal as untimely]).

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

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS DISMISSED.

Dated: **Albany, New York**
August 29, 2012

JUSTYN P. BATES
STATE REVIEW OFFICER