The University of the State of New York

The State Education Department
State Review Officer
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No. 15-024

**Application of the BOARD OF EDUCATION OF THE HARRISON 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:**
Ingerman Smith, LLP, attorneys for petitioner, Ana I. Gonzalez, Esq., of counsel

Mayerson & Associates, attorneys for respondents, Gary S. Mayerson, Esq., of counsel

## 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 determined that the educational program and services recommended by its Committee on Special Education (CSE) for respondents' (the parents') son for the 2012-13 and 2013-14 school years were not appropriate. The parents cross-appeal the IHO's failure to address certain allegations raised in the due process complaint notice. 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 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 disposition of this appeal, a full recitation of the student's educational history is not warranted. Briefly, however, on May 1, 2012 the CSE convened and recommended an 8:1+2 special class placement for the 2012-13 school year, together with related services consisting of individual speech-language therapy, individual occupational therapy (OT), and individual parent counseling and training (see Dist. Ex. 7 at pp. 1-2, 8-9). By letter dated August 23, 2012, the parents expressed concern about the "program and school placement" offered to the student for the

2012-13 school year, indicating that they did not believe "it [was] nearly adequate and appropriate to meet his individual needs" (Parent Ex. M). In addition, the parents indicated that the student would begin attending the Pathways School on September 5, 2012, and they would seek funding for the costs of the student's tuition at the Pathways School—as well as funding for the costs of transportation and "supplemental services for speech, occupational, home/play therapies, [and] family training"—from the district (id.).[1]

The student attended the Pathways School during the 2012-13 school year (see Parent Exs. L at p. 1; M-N; II at p. 1).

On April 15, 2013, a CSE subcommittee convened to conduct the student's annual review and to develop an IEP for the 2013-14 school year (see Dist. Ex. 11 at p. 1). The April 2013 CSE subcommittee recommended a 12-month school year program in an 8:1+2 special class placement, together with related services consisting of individual speech-language therapy, individual OT, and individual parent counseling and training (id. at pp. 1-2, 11-12).[2] In a letter dated June 14, 2013, the parents advised the district that they had not received the April 2013 IEP or a "written placement recommendation" for the student (Parent Ex. X at p. 1). As a result, the parents indicated that the student would "continue to attend Pathways School" for the 2013-14 school year—as a "component of his educational program"—together with the following "additional supports and services:" roundtrip transportation; a full-time, 1:1 paraprofessional; individual OT services; individual and small group speech-language therapy services; home and play therapies; and family training (id. [emphasis in original]). In addition, the parents notified the district of their intention to "hold the district financially responsible" for such services (id.).

The student attended the Pathways School during the 2013-14 school year (see Parent Exs. AA at p. 1; II at p. 1; UU at p. 1).

**A. Due Process Complaint Notice**

In an amended due process complaint notice dated July 29, 2013, the parents alleged that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years based upon approximately 97 separately enumerated allegations (see Parent Ex. B at pp. 1-11).[3] In pertinent part, the parents alleged that both the May 2012 CSE and the April 2013 CSE impermissibly predetermined the "program and placement" recommendations, the CSEs failed to conduct functional behavioral assessments (FBA) or develop appropriate behavioral intervention plans (BIP), the CSE meeting minutes misrepresented what occurred at the CSE meetings, and the May

[1] The Commissioner of Education has not approved the Pathways School as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[2] The student's eligibility for special education programs and related services as a student with autism for both the 2012-13 school year and the 2013-14 school year is not in dispute (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

[3] At the impartial hearing, the IHO clarified the issues to be resolved, and upon the parents' consent the IHO indicated that the following numbered paragraphs in the amended due process complaint notice would not be considered: 10, 30, 38, 73, 76-77, 79-80, 88, 91 (see Tr. pp. 81-85; Parent Ex. B at pp. 3-11).

2012 IEP and the April 2013 IEP contained "misinformation" (id. at pp. 3-4, 11). The parents alleged that both the May 2012 IEP and the April 2013 IEP failed to include appropriate annual goals and short-term objectives, and failed to address all of the student's needs (id. at pp. 7-8). The parents also alleged that the May 2012 IEP and the April 2013 IEP failed to include recommendations for a 1:1 paraprofessional, extended day services, and adequate levels and frequencies of related services (id. at p. 5). Next, the parents asserted that the May 2012 CSE and the April 2013 CSE failed to meaningfully consider the student's need for assistive technology or an appropriate educational methodology; in addition, the parents alleged that the May 2012 CSE and the April 2013 CSE failed to meaningfully consider privately obtained evaluations of the student and the recommendations set forth in those evaluations (id. at pp. 5-6, 8-9). With regard to the 2012-13 school year, the parents alleged that the district failed to conduct an appropriate speech-language evaluation of the student (id. at p. 11).

With regard to the assigned public school sites for the 2012-13 and 2013-14 school years, the parents alleged that the student would not be functionally grouped and the assigned public school sites could not implement the May 2012 IEP or the April 2013 IEP (see Parent Ex. B at pp. 6, 9-10). In regard to the unilateral placement, the parents alleged that the program at the Pathways School was reasonably calculated to provide the student with meaningful educational benefits (id. at p. 12). Finally, with respect to equitable considerations, the parents alleged they cooperated in good faith in the development of the student's IEPs and provided appropriate notice to the district (id. at p. 12).

As relief for both the 2012-13 and 2013-14 school years, the parents requested reimbursement or funding for the costs of the student's tuition at the Pathways School, as well as reimbursement or funding for the following: the services of a full-time, 1:1 paraprofessional; three 30-minutess sessions per week of individual OT, five 30-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of speech-language therapy in a group, and parent counseling and training (id. at p. 12). Additionally, for the 2012-13 school year, the parents requested reimbursement for the costs of the student's ABA program for July and August 2012 (id.). For the 2013-14 school year, the parents also requested reimbursement or funding for the costs of transportation services, "up to" four hours per week of home and play therapies, and "up to" four hours per month of individualized family training (id.).

**B. Impartial Hearing Officer Decision**

On January 8, 2014, the parties proceeded to an impartial hearing, which concluded on July 31, 2014, after nine days of proceedings (see Tr. pp. 1-2834). By decision dated January 12, 2015, the IHO concluded that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years (see IHO Decision at pp. 13-17). Specifically, the IHO found that the hearing record failed to contain evidence to support the May 2012 CSE's or the April 2013 CSE's decision to recommend an 8:1+2 special class placement (id. at pp. 14-15). In addition, the IHO indicated that the evidence submitted did not provide any "guidance" regarding how an "autistic [student] with global developmental delays" could function in an 8:1+2 special class placement without a "school aide assigned to him" (id. at p. 15). The IHO further noted that the student "barely made any progress even with a 1:1 adult assigned to him in prior schools" and at the Pathways School (id.). The IHO also found that the evidence in the hearing record did not support the May 2012

CSE's or the April 2013 CSE's decision to recommend an 8:1+2 special class placement without a "1:1 aide" for the 2012-13 and 2013-14 school years (id.).

Next, the IHO found that the evidence in the hearing record failed to support the May 2012 CSE's and the April 2013 CSE's decision to reduce the level of speech-language therapy services recommended in the May 2012 IEP and the April 2013 IEP (see IHO Decision at p. 16). Additionally, the IHO found that the district failed to provide the student with an adequate program for summer 2013 (id.). Consequently, the IHO concluded that the "cumulative effect" of the district's "program violations" resulted in a finding that the district failed to offer the student a FAPE (id.).

With regard to the parents' unilateral placement of the student, the IHO found that the Pathways School was appropriate (see IHO Decision at pp. 17-18). The IHO found that the evidence in the hearing record demonstrated that the student received "'some educational benefit'" and that the student received the "individualized attention" he required at the Pathways School (id. at p. 18). With respect to equitable considerations, the IHO found that the parents "cooperated in good faith at all times" with the district (id. at p. 19). As relief, the IHO awarded the parents reimbursement for the costs of the student's tuition at the Pathways School for the 2012-13 and 2013-14 school years, in addition to reimbursement or funding for the costs of the student's ABA program during July and August 2012; the costs of a full-time, 1:1 paraprofessional for both the 2012-13 and 2013-14 school years; and the costs of the following services for the 2012-13 and 2013-14 school years: three 30-minute sessions per week of individual OT, five 30-minute sessions per week of individual speech-language therapy, two 30-minute sessions per week of speech-language therapy in a small group, and "up to" four hours per month of individual parent counseling and training (id. at pp. 19-20).

**IV. Appeal for State-Level Review**

The district appeals and asserts that the IHO erred in finding that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years. The district argues that the IHO misapprehended, mischaracterized, and completely ignored the evidence in the hearing record and that the IHO misapplied the applicable legal standards. In addition, the district also argues that the IHO's decision is not entitled to deference. More specifically, the district alleges that the IHO erred in finding that the recommended 8:1+2 special class placement was not appropriate and the district failed to recommend a sufficient level of speech-language therapy for the student. In addition, the district asserts that the IHO erred in finding that it failed to offer the student an adequate program for summer 2013. The district also asserts that the IHO erred in finding that the district failed to provide the student with transitional services to assist the student in his "transition to and from the summer program at a different location." In addition, the district contends that the IHO erred in finding that the cumulative effect of the district's program violations resulted in a finding that the district failed to offer the student a FAPE. The district further contends that the IHO improperly relied upon testimonial evidence to conclude that the student would not make progress without the assignment of a 1:1 aide. Next, the district asserts that the IHO erred in finding that the Pathways School was an appropriate unilateral placement and that equitable considerations weighed in favor of the parents' requested relief.

In an answer, the parents seek to dismiss the district's petition on the basis that the district failed to timely initiate the appeal due to the untimely and improper service of the petition. Alternatively, the parents respond to the district's allegations and argue to uphold the IHO's conclusions that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years. In a cross-appeal, the parents assert that additional allegations pleaded in the amended due process complaint notice—although not addressed by the IHO—would also support a conclusion that the district failed to offer the student a FAPE for the 2012-13 and 2013-14 school years. In particular, the parents argue that the CSEs were not properly composed, the district failed to conduct an FBA of the student, the district failed to conduct a formal speech-language evaluation or assess the student's assistive technology needs, and the IEPs did not include a sufficient number of annual goals related to the student's communication needs.

In a reply and answer to the parents' cross-appeal, the district responds to the parents' allegations and alleges that the petition was timely and properly served. In the alternative, the district argues that any delay in serving the petition may be excused for good cause.

**V. Discussion - 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 a State Review Officer (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).[4]

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 was 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]; see 8 NYCRR 279.2). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be

[4] 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."

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 an untimely 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). However, an SRO may, in his or her sole discretion, excuse a failure 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 the Dep't of Educ., Appeal No. 12-120 [dismissing a district's appeal for failure to timely effectuate personal service of the petition on the parent]; Application of the Bd. of Educ., Appeal No. 12-059 [dismissing a district's appeal for failure to initiate the appeal in a timely manner with proper service]; Application of a Student with a Disability, Appeal No. 12-042 [dismissing parent's appeal for failure to properly effectuate service of the petition in a timely manner]; 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 this case, the district filed a verified petition—dated February 19, 2015—together with a memorandum of law and a copy of the administrative hearing record with the Office of State Review on Friday, February 20, 2015. According to the affidavit of service affixed to the verified petition, the district served the verified petition and memorandum of law—by regular mail—upon the attorney's office who represented the parents at the impartial hearing (see Dist. Aff. of Service). By letter dated February 24, 2015, the parents' attorney asked that an SRO dismiss the district's petition because the district failed to timely and personally serve the petition upon the parents (Answer Ex. B at pp. 1-3). In particular, the parents' attorney explained that on February 19, 2015, the district's attorney mailed the petition to his office without prior authorization in an attempt to serve the petition, noting further that the parents did not agree to waive personal service and that the district's attorney did not seek to use an alternate method of service before mailing the petition to his office (id. at pp. 1-2). By letter dated February 24, 2015, the Office of State Review declined to dismiss the district's petition at this juncture (id. at pp. 6-7). Shortly thereafter in a letter to the Office of State Review dated February 24, 2015 and received via facsimile at approximately 3:08 p.m., the district's attorney asserted that the district timely and properly served the petition,

indicating that February 24, 2015 was the last day to timely serve the petition, and further asserting that the delayed receipt of the IHO's complete decision excused any delay in serving the petition (id. at pp. 8-9). In addition, the district's attorney requested that an SRO "approve an alternative method of service" (id. at p. 9). On February 24, 2014, the district then served an amended verified petition and an amended memorandum of law upon the parents in accordance with the alternate method of service authorized by the Office of State Review (see Answer Ex. A at p. 1; Dist. Amended Pet. Aff. of Service).[5,6]

Based upon the foregoing, the district failed to initiate the appeal in accordance with the timelines prescribed in Part 279 of the State regulations. Here, the IHO's decision was dated January 12, 2015 (see IHO Decision at p. 21). Given that the IHO's decision was transmitted to the parties by mail, the regulatory exception permitting the exclusion of the date of mailing and the four days subsequent thereto applied in calculating the 35-day period within which the petition could have been timely served; therefore, the district was required to personally serve the petition upon the parents no later than Monday, February 23, 2015 (see 8 NYCRR 279.2[c], 279.11 [allowing for service on the following Monday if the last day for service falls on a Saturday or Sunday]).[7] However, the district did not serve the petition—or the amended petition—upon the parents until February 24, 2014 (see Dist. Aff. of Service; Dist. Amended Pet. Aff. of Service). Accordingly, the service of the petition or the amended petition upon the parents on February 24, 2015 was untimely.

Additionally, while an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the time specified for good cause shown, the reasons for the failure to timely seek review must be set forth in the petition (see 8 NYCRR 279.13). Here, the district failed to assert good cause—or any reasons whatsoever—in the petition or the amended petition for the failure to timely initiate the appeal (see generally Pet. ¶¶ 1-96; Amended Pet. ¶¶ 1-95). Rather, the district baldly asserts in its Verified Reply and Answer to the Cross-Appeal that the appeal was timely and properly served and that any delay in service should be excused for good cause—without setting forth exactly what constitutes "good cause" in this instance (Reply & Answer to Cr. Appeal ¶ 1). However, in the "Petitioner's Brief in Support of Its Reply to Respondents' Answer; and In Opposition to Respondents' Motion; and Answer to Respondents' Cross Appeal," ("District's Reply Brief"), the district argues that it made "valiant attempts to personally serve

[5] To be clear, the February 24, 2015 letter from the Office of State Review authorizing the use of an alternate method of service did not extend the regulatory timeframe for initiating this appeal, and the district's attorney does not now argue that the February 24, 2015 letter from the Office of State Review extended the regulatory timeframe for initiating this appeal (see Answer Ex. A at p. 1; Dist. Reply Br. at pp. 2-9).

[6] It is unclear why the district's attorney served an amended verified petition and an amended memorandum of law, especially when the district's attorney neither requested nor received permission to submit amended pleadings in this case. Notably, however, the service of the amended petition and amended memorandum of law in accordance with the alternate method of service authorized by the Office of State Review did not cure the defective service of the original petition.

[7] More specifically, the district was required to personally serve the petition upon the parents on Saturday, February 21, 2015; however, since the last day for personal service of the petition fell on a Saturday, regulations allowed the district to personally serve the petition upon the parents on the following Monday, February 23, 2015 (see 8 NYCRR 279.2[c], 279.11).

respondents" on February 23, 2015 (Dist. Reply Br. at pp. 3-4).[8] In addition, the district argues in its Reply Brief that any delay in service should be excused based upon the delayed receipt of the IHO's complete decision on January 20, 2015 (id. at pp. 6-9). However, even assuming that the district could set forth good cause for the failure to timely seek review in a reply brief as opposed to the petition or the amended petition, the reason stated in this case—that is, the delayed receipt of a complete copy of the IHO's decision—does not constitute good cause.

Initially, State regulations do not rely upon the date of receipt of an IHO decision—or the date the IHO transmitted the decision by e-mail—for purposes of ascertaining the deadline for serving a petition (see 8 NYCRR 279.2[b], [c]; Application of a Student with a Disability, Appeal No. 10-081; Application of a Student with a Disability, Appeal No. 10-034; Application of a Student with a Disability, Appeal No. 08-043; Application of a Child with a Disability, Appeal No. 04-004). Therefore, the actual date that the IHO's decision was transmitted to the district or the actual date upon which the district received the IHO's decision is not relevant to the instant analysis regarding timeliness.

Additionally, the district completed its original petition on February 19, 2015, and asserts no reason for failing to personally serve the parents on February 19 or February 20, 2015—other than indicating in the affidavit of service that the district's attorney mailed the petition to the attorney's office (see Dist. Aff. of Service; Dist. Reply Br. at pp. 1-9; Answer Ex. D at pp. 1-4). Here, given that the district completed and mailed the original petition on February 19, 2015, the delayed receipt of the complete copy of the IHO's decision on January 20, 2015 did not interfere with the district's ability to either prepare the petition or to timely serve the petition upon the parents.[9] Instead, the district waited until the last day to personally serve the petition on February 23, 2015, and foreseeable difficulties effectuating personal service arose in the case (see Answer Ex. D at pp. 2-3; Dist. Reply Br. Exs. 4 at pp. 1-2; 5 at p. 2).

Therefore, because the district did not timely serve the petition or the amended petition upon the parents or otherwise set forth good cause for the failure to timely initiate this appeal in the petition or the amended petition, the district's appeal must be dismissed (8 NYCRR 279.13; see New York City Dep't of Educ. v. S.H., 13-cv-3499, at pp. 9-12 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late and noting

[8] According to an e-mail on February 23, 2015 at approximately 6:02 p.m., the district's attorney acknowledged that she, herself, attempted to personally serve the parents at or about 5:10 p.m. and could not access the front door because she could not "locate a doorbell or buzzer on the outside of the gate" (Answer Ex. B at p. 4). After returning to her office, the district's attorney sent the abovementioned e-mail to the parents' attorney and inquired as to whether the parents' attorney would accept service on behalf of the parents (id.). Having not received a response to the February 23, 2015 e-mail, the district's attorney made a second attempt to personally serve the parents at their home on February 23, 2015 at approximately 7:20 p.m. (see Dist. Reply Br. Ex. 4 at pp. 1-2).

[9] In addition, the district indicates in its petition and its amended petition that the Board of Education did not authorize the instant appeal until January 22, 2015, which makes the alleged delay in the receipt of the IHO's complete decision on January 20, 2015 as good cause for the delayed service even less persuasive (see Pet. ¶ 4; Amended Pet. ¶ 4).

that it was foreseeable that difficulties might arise when attempting to effectuate service on the day service was due]).

**VII. Conclusion**

Having found that the district failed to timely initiate the appeal, the necessary inquiry is at an end.

**THE APPEAL IS DISMISSED.**

**THE CROSS-APPEAL IS DISMISSED.**

**Dated: Albany, New York**
**May 1, 2015**

**CAROL H. HAUGE**
**STATE REVIEW OFFICER**