The University of the State of New York

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

No. 16-007

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education

Appearances:
Charity Guerra, Acting General Counsel, attorneys for respondent, Gail M. Eckstein, 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 parent) appeals from a decision of an impartial hearing officer (IHO) which dismissed the parent's due process complaint notice. 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

This appeal arises from a decision of an IHO that was issued after remand (see Application of the Dep't of Educ., Appeal No. 15-022). As discussed in the prior appeal, the hearing record in that proceeding contained no evidence relative to the student's educational needs. In this proceeding, respondent (the district) has offered some documentary evidence of the student's educational and behavioral needs; however, the entire hearing record can best be described as sparse.

The hearing record reflects that on November 27, 2013, a CSE met and developed an IEP for the student to be implemented beginning on December 10, 2013 (Dist. Ex. 7 at pp. 1, 9-10).[1] Finding the student remained eligible for special education and related services as a student with

[1] The November 27, 2013 IEP had a projected annual review date of November 26, 2014 (Dist. Ex. 7 at p. 1).

autism,[2] the November 2013 CSE recommended special education on a twelve-month basis consisting of a 6:1+1 special class placement in a special school with the related services of one 45-minute session of individual counseling per week; one 45-minute session of group counseling per week; two 45-minute sessions of group speech-language therapy per week; one monthly session of parent counseling and training; and a full-time 1:1 crisis management paraprofessional (id. at p. 10).

According to the November 2013 IEP, the CSE considered the results of several assessments including: the Developmental Reading Assessment; an unspecified writing continuum; the Student Annual Needs Determination Inventory (SANDI); and a Level One Vocational Assessment (Dist. Ex. 7 at p. 1). The November 2013 CSE recommended a behavioral intervention plan, use of alternate assessment, adapted physical education, special transportation, five annual goals with corresponding short-term objectives, measurable postsecondary goals, and a coordinated set of transition activities (id. at pp. 3-9, 11-13). The November 2013 CSE also indicated that environmental and human or material resources were required to address the student's needs, such as: a specialized adapted curriculum; high levels of structure; visual aids; and support services to meet the student's academic and social needs (id. at p. 3).

With respect to adaptive behavior, the November 2013 IEP indicated that the student presented with defiant behaviors, including refusing to complete work, walking away, or pushing to avoid an activity (Dist. Ex. 7 at p. 1). In addition, the IEP stated that, at times, the student would make fun of peers by mimicking their phrases or gestures, but that he responded to staff prompts to discontinue inappropriate behaviors (id.). With respect to social development, the November 2013 IEP indicated that the student was aware of peers and would initiate some communication with them when prompted, had difficulty expressing his emotions, and used the phrase "I don't know" to avoid responding to a question he did not want to answer (id. at p. 2). The November 2013 IEP suggested that the student continue to work on "knowing what is and is not appropriate to say to adults/students in the classroom and community in order to refrain from using inappropriate statements" (id.). The November 2013 CSE recommended a 1:1, full time crisis management paraprofessional, counseling, and an annual goal to address the student's behavioral needs (id. at pp. 8-10).

Also included in the hearing record are a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP) dated November 15, 2013 (Dist. Ex. 8). According to the November 2013 FBA, the student exhibited defiant behaviors when given directions with which he did not want to comply, including pushing staff, leaving the room, making verbal threats, or displaying fake guns made from his hands and pretending to shoot the staff (id. at p. 1). Additionally, according to the FBA, the student displayed inappropriate communication with females in the school and community when he attempted to gain their attention, including making inappropriate comments to staff members (id.). The FBA recommended eight interventions and indicated particular positive reinforcement strategies, what the expected changes in the student's behavior were, and the methods/criteria for outcome measurement (id. at pp. 1-2). The November 2013 BIP, consistent with the FBA, identified defiant behaviors and inappropriate communication with females as the target behaviors (compare Dist. Ex. 8 at p. 1, with Dist. Ex. 8 at p. 3).

[2] The student's eligibility for special education programs and related services as a student with autism is not in dispute (see 34 CFR 300.8[c][1][i]; 8 NYCRR 200.1[zz][1]).

According to the BIP, the expected behavior changes included the student advocating for himself verbally instead of acting out, asking for breaks, and using appropriate communication when speaking with females (Dist. Ex. 8 at p. 3). Additionally, the BIP included, as methods/criteria for outcome measurement, a requirement for staff to keep a continuous log of the time, location, severity, and duration of the student's behaviors (id.).

The hearing record indicates that the student was injured during an altercation that occurred on September 8, 2014 (Parent Exs. A-C). By letter dated September 12, 2014, the parent notified the principal of the student's school that the student had been thrown to the floor in a school hallway by a district paraprofessional and had injured the back of his head (Parent Ex. D at p. 1). According to the parent, the school was unable to "handle [the student's] education anymore" and as a result she would not return the student to school (id. at p. 2). The parent requested the district convene a CSE meeting and that the CSE recommend a nonpublic school placement (id.). The hearing record also includes a written statement dated September 15, 2014, from the student's residential habilitation specialist, describing what he witnessed of the incident between the student and the district paraprofessional (Parent Ex. E).

A. Due Process Complaint Notice

By due process complaint notice dated September 16, 2014, the parent alleged that the student was grabbed and thrown to the floor of the hallway outside of the school office by a district paraprofessional (IHO Ex. I at p. 1). The parent also alleged that the student had been involved in "too many accidents" from 2010 through 2014 (id.). As proposed relief, the parent requested that the district offer the student an "appropriate school," which was "not in [the] public school system" (id.).

B. Prior Proceedings and Facts Post-Dating the Due Process Complaint Notice

The first impartial hearing convened on October 30, 2014 (see Tr. pp. 1-21). On this date, it appears from the hearing record that the parent presented a list of 16 items for relief, at least some of which were not included in the parent's due process complaint notice (Tr. p. 4). The IHO presiding over the impartial hearing (IHO 1) verbally summarized the relief sought in the parent's due process complaint notice, indicating that the parent sought to have the student removed from a public school operated by the district and receive services from a district provider at his home until such time as the district conducted new evaluations of the student (Tr. pp. 4-5).[3] IHO 1 stated to the parent on the record that he could either order the district to conduct evaluations of the student and provide home instruction or allow the parent to file an amended due process complaint notice to include the new allegations presented at the hearing that were not contained in her due process complaint notice (Tr. pp. 4-7). It appears that the district did not contest the parent's request for home instruction and new evaluations (Tr. p. 7). After granting an extension requested by the parent, IHO 1 told the parent that she had until December 1, 2014, to decide whether she would like to proceed by pursuing the relief sought in her due process complaint notice or amending her due process complaint notice to include the additional allegations raised at the impartial hearing (Tr. pp. 9-10). In an interim decision, dated November 6, 2014, IHO 1

[3] It appears that the parent sought, as a result of these new evaluations, placement in a nonpublic school (Tr. pp. 4-7).

memorialized the options he articulated to the parent during the impartial hearing (IHO Ex. III at pp. 2-3).

Although the hearing record reflects the district attempted to obtain parental consent to evaluate the student from November 12, 2014 through December 8, 2014, the student was evaluated by a psychiatrist on November 22, 2014 (compare Dist. Ex. 2 at p. 1, with Dist. Ex. 3 at p. 1). The November 2014 psychiatric evaluation is the only evaluation contained in the record.[4]

By final decision, dated December 24, 2014, IHO 1 indicated that he had not received any response from the parent by the December 1, 2014 deadline (IHO Ex. IV at p. 3).[5] Therefore, IHO 1 concluded that the parent had abandoned her claims (id.). Nevertheless, IHO 1 ordered the district to provide immediate home instruction to the student because he was "non-attending" at the time of the impartial hearing (id.). IHO 1 further ordered the district to fund a "comprehensive independent psychological/neuropsychological/psychiatric" evaluation of the student, based on the fact that the district did not oppose the parent's request for such relief (id.). IHO 1 dismissed the parent's other demands for relief without prejudice for failure to pursue them in a timely manner (id.).

The parent appealed the final decision of IHO 1. In a decision dated April 2, 2015, an SRO vacated the order of IHO 1 and remanded the matter to another IHO "to conduct a new hearing, develop a record, and render a decision consistent with the requirements of due process" (Application of the Dep't of Educ., Appeal No. 15-022).

C. Impartial Hearing Officer Decision

On August 12, 2015, the parties returned to an impartial hearing conducted by a different IHO (IHO 2), which concluded on November 18, 2015, after two additional days of proceedings (see Tr. pp. 22-196). In a decision dated December 14, 2015, IHO 2 set forth the procedural history of this case, the chronology of events, the parties' respective positions, the general proceedings during the impartial hearing with respect to documentary and testimonial evidence, and the ultimate relief sought by the parent (see IHO 2 Decision at pp. 1-7). Turning to the parent's due process complaint notice, IHO 2 reiterated the parent's allegations that the student had been injured by a district paraprofessional on September 8, 2014, and had been involved in "[t]oo many accidents" from 2010 through 2014 (id. at pp. 3-4). IHO 2 determined that the sole issue before him for resolution was the allegation that the student was injured by a district paraprofessional; and that the parent's claims of "accidents" from 2010 through 2014 were not properly alleged and further, exceeded the two-year limitations period (id. at p. 4).

[4] While it is not necessary to the disposition of this appeal to consider the substantive content of this evaluation, the evaluation fails to cite any records in support of its conclusions and recounts primarily the evaluator's observations of the student and parent. Although the evaluation contains several diagnoses, the basis therefor is not specified in the evaluation (Dist. Ex. 3 at p. 4). Generally, the evaluation fails to comply with State regulations governing reevaluation and assessment (see 8 NYCRR 200.4[b][4], [6][i], [ii], [xi]).

[5] Although the decision is dated December 24, 2014, the body of the decision indicates that it was drafted on January 1, 2015 (see IHO Ex. IV at p. 3).

After recounting the parties' respective positions regarding the alleged assault, IHO 2 made no findings as to the "factual circumstances" of the September 8, 2014 incident, having determined that the parent had not raised any issues in her due process complaint notice that were related to the student's identification, evaluation, or educational placement, or the provision of a free appropriate public education (FAPE) to the student (IHO 2 Decision at pp. 4-5). In dismissing the parent's due process complaint notice, IHO 2 noted that the parent did not directly contest the adequacy of the program provided to the student during the 2014-15 school year and determined that the September 8, 2014 incident did not "negatively impact" the student's educational program, nor render his placement inappropriate (id. at pp. 5-6).

IV. Appeal for State-Level Review

The parent appeals, appearing pro se and arguing that IHO 2 erred by dismissing her claims. Given that the parent is proceeding pro se, and that this proceeding has been pending for 18 months, I have reviewed the parent's petition in the light most favorable to her in order to ascertain her claims. The parent alleges that the district failed to offer the student appropriate services from 2010 through 2014; failed to provide a paraprofessional until 2013; failed to provide parent counseling and training; and failed to recommend a residential placement. The parent also claims that the district failed to implement the student's IEP by allowing dangerous and life threatening conditions to persist at the student's school, leaving the parent no choice but to keep the student at home. In particular, the parent alleges that the student's assigned 1:1 paraprofessional failed to intervene when the student was assaulted by a district paraprofessional. The parent requests that an SRO grant her request to extend the two-year statutory and regulatory timeframe to make an IDEA claim. The parent further alleges that IHO 2 exhibited bias in favor of the district during the impartial hearing proceedings and in his decision. As relief, the parent requests that the student attend a nonpublic school at district expense and receive compensatory educational services. The parent also requests a number of other remedies which are unavailable in an IDEA due process proceeding.

In its answer, the district denies the parent's allegations and argues to uphold IHO 2's decision in its entirety. The district also argues that the majority of the claims raised are not cognizable under the IDEA and the parent's requested relief is not available in an IDEA impartial hearing. The district further alleges that the claims which are properly raised pursuant to the IDEA were not part of the parent's due process complaint notice and cannot be reviewed in this appeal.

V. Discussion

A. Conduct of Hearing

The parent alleges that IHO 2's conduct during the impartial hearing was inappropriate and that IHO 2 failed to facilitate the parent's testimony and introduction of additional evidence. It is well settled that an IHO must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see Application of a Student with a Disability; Appeal No. 11-144; Application of the Bd. of Educ., Appeal No. 10-097). An IHO must render a decision based on the hearing record (see Application of a Student with a Disability, Appeal No. 09-058; Application of a Student with a Disability, Appeal No. 08-036). Moreover, an IHO, like a judge, must be patient, dignified and courteous in dealings with litigants and others with whom the IHO interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of

any person, and shall not, by words or conduct, manifest bias or prejudice, according each party the right to be heard (Application of a Child with a Disability, Appeal No. 07-090; Application of a Child with a Disability, Appeal No. 07-075).

In addition, an IHO has the responsibility to ensure that there is an adequate record upon which to render findings and permit meaningful review, including the authority to ask questions of counsel or witnesses for the purposes of clarification or completeness of the hearing record (8 NYCRR 200.5[j][3][vii]; Application of a Student with a Disability, Appeal No. 11-004; Application of a Student with a Disability, Appeal No. 10-086).

In this case, based on my review, the hearing record does not require reversal of IHO 2's decision on the basis that he acted with bias or abused his discretion in the conduct of the hearing. An independent review of the hearing record demonstrates that the parent was provided an opportunity to be heard at the impartial hearing, which was conducted in a manner consistent with the requirements of due process (Tr. pp. 27-42; see, e.g., 20 U.S.C. § 1415[g]; Educ. Law § 4404[2]; 34 CFR 300.514[b][2][i], [ii]; 8 NYCRR 200.5[j]). A review of the hearing record further shows that IHO 2 attempted to assist the parent, who was unrepresented by counsel (see, e.g., Tr. pp. 27-28, 42; 8 NYCRR 200.5[j][3][vii]). IHO 2 also acted within the scope of his authority when he asked a series of questions of the student's residential habilitation specialist in order to more fully develop the hearing record on the issue that was presented to him to resolve (Tr. pp. 118-19, 134-35, 138-39; 8 NYCRR 200.5[j][3][vii]).

Nevertheless, it is unfortunate that the parent sought, and both IHO 1 and IHO 2 permitted her, to proceed without an interpreter. It was indeed the parent's choice to present her case in English (Tr. pp. 42, 179-83); however, the purpose of an interpreter is twofold. As important as the parent's right to be understood during an impartial hearing is the parent's right to understand the proceedings (see 8 NYCRR 200.5[j][3][vi]). The IDEA requires communications between the local education agency and the parent to be in the native language of the parent and that interpretation services be provided during CSE meetings, in part to ensure that the parent is able to fully comprehend and participate in the process (20 U.S.C. § 1415[b][4], [d][2]; Educ. Law § 4402[3][b][ii][B]; 34 CFR 300.503[c][1][ii]; 8 NYCRR 200.5[a][4]; see also 20 U.S.C. § 1414[b][1]; 34 CFR 300.322[e]; 300.504[d]; 8 NYCRR 200.4[a][2][iv][b][9][i], [ii]; 8 NYCRR 200.4[b][6][xii]; 8 NYCRR 200.4[g][2][ii]; Marple Newtown Sch. Dist. v. Rafael N., 2007 WL 2458076, at *5 [E.D. Pa. Aug. 23, 2007] [upholding an administrative decision which required a school district to provide placement process documentation in a language the parent could understand so the parent could participate in a meaningful way]; Application of a Student with a Disability, Appeal No. 13-047).

The transcript from the second day of the hearing seems to indicate that the parent was unaware of her right to testify and to present additional evidence (Tr. pp. 184-91; see also IHO Ex. V). Ideally, the IHO could have allowed the parent to proceed in English, but required an interpreter to communicate the entirety of the impartial hearing proceedings to the parent in her native language.

Although I disagree with IHO 2's decision to conduct the hearing without an interpreter, his decision to do so does not constitute an abuse of discretion, misconduct, incompetence, or impropriety in this case. Moreover, the record reflects that the parent's requests and questions

directed to IHO 2 were related to the alleged accidents between 2010 and 2014 (see Tr. pp. 186-89). The parent was not denied a fair hearing or an opportunity to be heard given that these claims are unrelated to the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student.

B. Initiation and 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]). 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 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. 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]). 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 this case, the parent failed to initiate the appeal in accordance with the timelines prescribed by the regulations governing practice before the Office of State Review. Here, IHO 2's decision was dated December 14, 2015 (see IHO 2 Decision at p. 6). Assuming that IHO 2's decision was transmitted to the parties by mail and 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; the parent was required to personally serve the petition on the district no later than January 25, 2016 (see 8 NYCRR 279.2[b]; 279.11 [allowing for service on the following Monday if the last day for service falls on a Saturday or Sunday]). However, the parent's petition was verified on February 2, 2016 and was signed and dated February 8, 2015, and was therefore untimely.[6]

As previously noted, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the time specified for good cause shown set forth in the petition (see 8 NYCRR

[6] Although the parent did not submit an affidavit of service upon the district, the district, by requesting an extension of its time to answer the petition to February 19, 2016, implicitly conceded that it was served with the petition on February 9, 2016 (Letter from Gail M. Eckstein, Esq., to Office of State Review [Feb. 16, 2016]; see 8 NYCRR 279.5).

279.13). Here, the parent's asserted good cause is that she appears pro se. The parent was aware of the regulations governing an appeal to an SRO, evidenced by her appeal in a prior proceeding (see Application of a Student with a Disability, Appeal No. 15-022). In addition, IHO 2's decision provided notice to the parties of their right to appeal to a State Review Officer and the timelines for initiating an appeal, as well as that directions and sample forms were available on the Office of State Review website (IHO 2 Decision at p. 8). The parent contacted the Office of State Review by letter dated January 20, 2016 to request an extension of time to serve and file her petition. The parent was advised by letter dated January 22, 2016 that an SRO could not extend the time to serve and file a petition, but could only excuse late service after a petition was received; the parent was also advised that an SRO would entertain a request to amend a timely served petition. The parent instead proceeded as indicated above, and did not effectuate service of her petition on the district for an additional two weeks. "Good cause for late filing would be something like postal service error, or, in other words, an event that the filing party had no control over" (Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *5 [N.D.N.Y. Dec. 19, 2006]). While understandable that a pro se parent would have difficulty preparing papers for service, she was aware of the time limitations in which she was required to do so, and I decline to exercise my discretion to excuse her failure to timely serve the petition (see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012] [noting that "delays due to scheduling difficulties or lack of availability on the part of parties or counsel are not typically found to be 'good cause' for untimely petitions"]; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *5 [N.D.N.Y. Sept. 25, 2009] [upholding an SRO's decision to dismiss a petition where the parents were aware of the timelines in which to initiate an appeal]; Application of a Student with a Disability, Appeal No. 08-116 [dismissing an appeal as untimely and finding that the parents' reasons for untimely service, including that they were proceeding pro se and required additional time to prepare the petition, did not constitute good cause]; Application of a Child with a Disability, Appeal No. 05-106 [same]).

C. Jurisdiction

Furthermore, excusing the parent's failure to timely initiate her appeal would not provide a basis to award any relief to the parent, as IHO 2 correctly determined that the parent attempted to raise claims that were not included in her due process complaint notice and properly limited his review to the parent's claims regarding the September 8, 2014 incident. IHO 2 further found that the incident between the student and a district paraprofessional was not related to the identification, evaluation, or educational placement of the student, or to the provision of a FAPE to the student. Therefore, IHO 2 properly determined that the parent's claims were beyond the jurisdiction of an impartial hearing officer. The hearing record supports IHO 2's findings that the parent's additional claims were not set forth in her due process complaint notice, the parent did not amend the due process complaint notice, and the district did not consent to expand the scope of the hearing to include new claims.[7] IHO 2 also correctly applied the two-year limitations period to the parent's due process complaint notice and appropriately found the parent's allegation of "too many accidents" during the 2010-14 school years to be too vague to form the basis of a claim (see 20

[7] A party may not raise issues at the impartial hearing or for the first time on appeal that were not raised in the due process complaint notice unless the other party agrees (20 U.S.C. § 1415[f][3][B]; 34 CFR 300.508[d][3][i], 300.511[d]; 8 NYCRR 200.5[j][1][ii]), or the due process complaint is amended prior to the impartial hearing per permission given by the IHO at least five days prior to the impartial hearing (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][i][b]).

U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2]; 8 NYCRR 200.5[j][1][i]).

Accordingly, IHO 2's dismissal of the parent's due process complaint notice has become final and binding on the parties (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see also M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). Notwithstanding the parent's failure to timely initiate this appeal, I have reviewed the entire hearing record and find no reason to disturb the findings of IHO 2.

VI. Conclusion

While the dismissal of the parent's claims resolves the instant proceeding, the student's educational status going forward remains unresolved. It is unsurprising that the student's injury at school during the September 8, 2014 incident—particularly given his behavioral challenges and the district's program for him which included a BIP and other strategies designed to manage his behaviors—was a matter of concern to the parent and prompted her to pursue a remedy through due process. Moreover, it appears that, since the incident, communication between the district and the parent has been compromised to such an extent that it is unclear what, if any, services the student is currently receiving. Indeed, the hearing record reflects that the student has been out of school since September 8, 2014, and there is no evidence as to whether the student has received any home-based services since that time. I remind the parties that the student will become ineligible for special education and related services at the end of the 2016-17 school year and that the district remains bound to its obligations to the student, as provided for under the IDEA, until such time as the student's eligibility expires. The parent is similarly reminded that, to the extent she seeks special education services for her son from the district, she is obligated to cooperate with the district in its efforts to provide a FAPE to the student going forward.

Based on the foregoing, I am constrained to dismiss the parent's appeal. However, I fully expect that the district and the parent will adhere to their respective obligations concerning the student and his education. I also encourage the district to assist in establishing contact between the parent and the local office of the State Education Department's Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR), and to convene a CSE meeting with an ACCES-VR representative present to assist the parent and student in determining future steps to take regarding the student's education and job training.[8]

[8] ACCES-VR has a comprehensive web site providing information about the services it offers, including guidance regarding how to apply for services (http://www.acces.nysed.gov/vr/).

I have considered the parent's remaining contentions and find them to exceed the jurisdiction of a State Review Officer or that I need not address them in light of the determinations reached herein.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 6, 2016

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CAROL H. HAUGE
STATE REVIEW OFFICER