The University of the State of New York

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

No. 21-067

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Harborfields Central School District

Appearances:
Law Offices of Frank C. Panetta, Esq. PC, attorneys for petitioners, by Frank C. Panetta, Esq.[1]

Guercio & Guercio, LLP, attorneys for respondent, by John P. Sheahan, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their request for compensatory education to remedy claims arising from the student's 2013-14, 2014-15, 2015-16 and 2016-17 school years. 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

[1] The request for review in this matter is signed by the student's mother and is verified by the student's mother acting "pro se." However, after several communications related to this appeal were made by the parents' attorney, by letter dated March 10, 2021, Frank C. Panetta, Esq. informed the Office of State Review that "You can certainly consider this a notice of appearance and address us with any further communications."

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

The parties' familiarity with the detailed facts and procedural history of the case is presumed and will not be recited here. This was a lengthy, complex case which resulted in a very large hearing record. The record contains 15 different IEPs spanning the school years at issue (see Dist. Exs. 1-11; 122-25). Despite frequent disagreements between the district and parents concerning his program and placement, the student remained in the district public schools during

the school years at issue, and graduated from the district, earning a Regents diploma, at the close of the 2019-20 school year (Dist. Ex. 289). The first administrative proceeding was commenced by a due process complaint notice file by the parent's attorney,[2] dated November 24, 2015,in which the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2013-14, 2014-15, and 2015-16 school years (see IHO Ex. I).

An impartial hearing convened on January 20, 2016, and three hearing dates were conducted (Tr. pp. 1-27). In a second due process complaint notice dated November 28, 2016, the parents filed additional claims concerning the 2015-16 and 2016-17 school years (see IHO Ex. II). The two due process complaint notices were consolidated into a single impartial hearing by an interim decision of the IHO dated February 24, 2017 (IHO Interim Order dated February 24, 2017). The impartial hearing concluded on September 3, 2020 after a total of 48 days of proceedings (Tr. pp. 1-6792).[3] In a final decision dated November 16, 2020, the IHO determined that the district offered the student a FAPE for each of the four school years at issue and denied the parents' request for compensatory education (IHO Decision at pp. 1-246).[4]

I will briefly summarize the contents of the IHO's 209-page decision, which is notably thorough in its description of the evidence and testimony gathered during the lengthy impartial hearing, and carefully describes the reasoning behind the numerous findings and determinations therein.

The IHO decision began with a table of contents, and then listed each hearing date with appearances by the district and parent attorneys and witnesses (IHO Decision at pp. 1-14). Next, the IHO described the procedural history of the case and the position of the parties with respect to the claims at issue (id. at pp. 15-21). Then the IHO described the details of the student's educational history for each of the four school years at issue, describing the student's IEPs, evaluations, various reports and significant events of each school year, with references to exhibits and testimony in the hearing record (id. at pp. 21-48). The IHO also detailed the student's educational history known to have occurred after the school years at issue, noting, among other

[2] The attorney that filed the due process complaint notices withdrew after the close of evidence in September 2019, but prior to the submission of final reply or sur-reply briefing (see September 3, 2020 Tr. pp. 3-4; IHO Ex. XVIII).

[3] Unsurprisingly for a hearing record this size, there are minor page numbering errors and inconsistencies in the impartial hearing transcripts. For example, each of the six hearing dates conducted between January 20, 2016 and January 23, 2017 begin at page 1 through the close of the hearing on the given date, rather than being consecutively paginated. Beginning on the hearing date of March 28, 2017, the page numbering of the transcripts is consecutive, more or less, up to and including the September 20, 2019 hearing date, ending on page 6792. Thereafter the transcripts of the final two hearing dates, July 13, 2020 and September 3, 2020, both begin at page 1 and are not consecutively paginated with each other. All told there are well over 7000 pages of transcripts in the impartial hearing record. Additionally, there are roughly 3617 pages of parent, district and IHO exhibits in the impartial hearing record (see Parent Exs. 1-5; Dist. Exs. 1-284, 288-89; IHO Exs. I-XXX).

[4] There is also a December 15, 2020 "corrected" IHO decision present in the hearing record which contains adjustments to the list of exhibits list at the end of the decision, but no substantive changes (see December 15, 2020 IHO Decision at pp. 209-46). However, the November 16, 2020 decision is the operative decision because IHOs lack the authority to retain jurisdiction and materially alter their final decisions (see Application of a Student Suspected of having a Disability, Appeal No. 19-010; Application of the Dep't of Educ., Appeal No. 17-009).

things, the fact that the student graduated from the district with a Regents diploma in June 2020 (id. at pp. 48-49).

The IHO decision then provided a detailed summary of each of the 18 witnesses who testified on behalf of the parents and the district at the impartial hearing (IHO Decision at pp. 49-154). The district witnesses described by the IHO included the student's general and special education teachers from the district's middle school and high school, several related service providers, district specialized reading teachers, district school psychologists, a district middle school assistant principal, a licensed clinical social worker, a district school administrator, a behavior analyst and a vocational counselor, several of whom testified on rebuttal as well as direct (IHO Decision at pp. 49-107).

Turning to the witnesses called by the parents, the IHO summarized the testimony of a neuropsychologist who evaluated the student, and two licensed behavior analysts (IHO Decision at pp. 107-17). The IHO also summarized the lengthy testimony of the student's mother, who described events of each school year, as well as the student's father (IHO Decision at pp. 108-54).

Next, the IHO set forth the applicable legal standards pertinent to addressing the parents' claims concerning delivery of a FAPE to the student, implementation of the student's IEPs, the request for compensatory education, the adequacy of IEP annual goals, and the IDEA and bullying (IHO Decision at pp 154-60).

The IHO then made preliminary conclusions concerning the specificity of the parents' due process complaints, finding that the district had effectively waived some of its arguments, and made a general finding with respect to witness credibility (IHO Decision at pp. 160-61). The IHO also made general findings concerning the student's diagnoses and characteristics, bullying issues, and the parents' experience and expertise in education (IHO Decision at pp. 162-66).

The IHO then made factual findings and legal conclusions with respect to each school year at issue (IHO Decision at pp. 166-208). Concerning the 2013-14 school year, the IHO found that although there had been certain procedural errors in developing the student's programing for the school year, the district established that it had provided a FAPE for the student, and the parents' claims concerning the appropriateness of the student's IEPs and behavior intervention plans (BIPs), and claims concerning bullying, had not been demonstrated by the evidence (IHO Decision at pp. 166-78).

Concerning the 2014-15 school year, the IHO addressed numerous claims, most notably with respect to implementation of the student's math classes and found that although the student's math program had not been implemented in accordance with the 12:1+2 special class the student's IEP and therefore materially deviated from the terms of the IEP, the student had received 1:1 math instruction and there had been some progress and no educational detriment from the arrangement that the district employed and, consequently, the IHO found no basis for an award of compensatory education (IHO Decision at pp. 178-92).

With regard to the 2015-16 school year, the IHO again addressed numerous claims, notably with respect to IEP goals, the math programming and IEP implementation, and concluded that those claims did not result in a denial of FAPE (IHO Decision at pp. 192-204). The IHO also

addressed issues arising from the student's social emotional needs, a period of home instruction that occurred during this school year, and claims concerning make-up services for periods of home instruction that were imperfectly delivered. The IHO ultimately concluded that the district had not failed to provide a FAPE for the 2015-16 school year (id.).

The IHO also addressed claims arising from the 2016-17 school year up to the time of the November 2016 second due process complaint notice (IHO Decision at pp. 204-08; see IHO Ex. II). The IHO found that some of the parents' claims had not been properly raised, and addressed claims concerning CSE evaluations, implementation of the student's IEP, IEP goals and transition services, and found that the district had established that the program developed for the 2016-17 school year was reasonably calculated to enable the student to make meaningful progress in light of his unique circumstances (id.).

Lastly, the IHO determined that in light of the student's graduation he had become ineligible for special education, and a gross denial of FAPE had not occurred even if the parents claims were aggregated (IHO Decision at p. 208). Accordingly the IHO concluded that based upon the findings in the decision, there was no basis to order the relief requested by the parents in the matter (IHO Decision at p. 209).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parents' request for review and the district's answer thereto is also presumed and will not be recited here in detail. Briefly, the parent brings numerous allegations of IHO error with respect to her findings concerning each school year at issue, asserting that each IEP failed to provide a FAPE in the LRE and that implementation of the student's IEPs in the district's schools was improper during the school years at issue. The district chiefly asserts that the parents' request for review should be dismissed as untimely and, in any event, the student's graduation with a Regents diploma forecloses an award of compensatory education to the student.

V. Discussion

A. Timeliness of Appeal

An appeal from an IHO's decision to an SRO must be initiated by timely personal service of a verified request for review and other supporting documents upon a respondent (8 NYCRR 279.4[a]). A request for review must be personally served within 40 days after the date of the IHO's decision to be reviewed (id.). 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[b]). State regulation provides an SRO with the authority to dismiss sua sponte an untimely request for review (8 NYCRR 279.13; see e.g., Application of the Board of Educ., Appeal No. 17-100 [dismissing a district's appeal for failure to timely effectuate personal service on the parent]; Application of a Student with a Disability, Appeal No. 16-014 [dismissing a parent's appeal for failure to effectuate service in a timely manner]). However, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the 40-day timeline for good cause shown (8 NYCRR 279.13). The reasons for the failure must be set forth in the request for review (id.).

"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]; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012]).

Due to the COVID-19 pandemic, between March and December 2020, the undersigned issued a series of General Orders permitting alternate forms of service of pleadings and prescribing that the COVID-19 pandemic had deemed good cause to serve a late request for review in all State-level review proceedings conducted pursuant to Part 279 of State regulations ("Coronavirus (COVID-19) Updates," Office of State Rev., available at https://www.sro.nysed.gov/coronavirus-covid-19-updates). The undersigned's General Orders aligned with provisions of the Governor of the State of New York's Executive Order 202.8 and extensions thereto that tolled the timelines for initiating a legal proceeding, although the General Orders were briefly continued beyond the final extension of the tolling provisions of Executive Order 202.8 in order to reinitialize the multiple timelines in Part 279 a controlled and orderly manner.[5]

Relevant to the timeliness of the parents' request for review, the Thirteenth Revised General Order states as follows:

> 5) . . . from **March 20, 2020 through January 29, 2021**, the continuing disaster emergency stemming from the COVID-19 pandemic is deemed good cause to serve a late Request for Review of an IHO decision dated on or after February 10, 2020 through December 14, 2020 pursuant to 8 NYCRR 279.4(a); provided however that **THIS LATE SERVICE PROVISION SHALL EXPIRE AFTER January 29, 2021**;
>
> 6) the timelines for serving and filing a Notice of Intention to Seek Review, a Notice of Intention to Cross-Appeal, and a Request for Review of an IHO decision dated December 15, 2020 or later shall be adjudicated in accordance with the express terms of 8 NYCRR Part 279.

("Thirteenth Revised General Order Regarding Coronavirus Disease 2019 and Recommencement of Timelines under 8 NYCRR Part 279," at p. 4, Office of State Rev. [Dec. 31, 2020] [bolded

[5] As described in the Thirteenth Revised General Order, the Governor declared under Executive Order 202.72 that the tolling provisions of Executive Order 202.8 and the extensions thereto were no longer in effect after November 4, 2020 ("Thirteenth Revised General Order Regarding Coronavirus Disease 2019 and Recommencement of Timelines under 8 NYCRR Part 279," at p. 3, Office of State Rev. [Dec. 31, 2020], available at https://www.sro.nysed.gov/common/sro/files/13th-revised-general-order-12.31.20_1.pdf). Executive Order 202.72 was published in the New York State Register on December 2, 2020. Thereafter, the Thirteenth Revised General Order was issued on December 31, 2020 and, in relevant part, sought "to avoid substantial injustice from a sudden, retroactive application of the November 4, 2020 expiration of the tolling provisions of Executive Order 202" ("Thirteenth Revised General Order," at p. 4).

emphasis in the original; underlined emphasis added], available at https://www.sro.nysed.gov/common/sro/files/13th-revised-general-order-12.31.20_1.pdf).[6]

The IHO's initial decision was dated November 16, 2020 (see IHO Decision at p. 209). Accordingly, pursuant to section 5 of the Thirteenth Revised General Order, the continuing disaster emergency stemming from the COVID-19 pandemic was deemed good cause to serve a late request for review concerning the decision; however, that late service provision expired on January 29, 2021, per the order Therefore, in order to have availed themselves of this "safe harbor" provision, the parents would have had to serve the request for review on or before January 29, 2021. The parent's request for review, however, was served upon the district on March 1, 2021 (but was dated February 22, 2021) (Req. for Rev. at p. 10; Parent Aff. of Service). As a result, at the time the parents served the request for review upon the district, they could no longer rely on the tolling provisions related to the COVID-19 pandemic being deemed good cause for serving a late request for review as per the terms of the Thirteenth Revised General Order. Additionally, the parents have not asserted any good cause for the failure to timely seek review in the request for review. Rather, the parents do not acknowledge that the request for review was not served or filed in a timely fashion and do not proffer any excuse at all for their untimely pleading.

In light of the above, the parents' March 1, 2021 service of the request for review upon the district was untimely, the late service provision set forth in the Thirteenth Revised General Order has expired and does not apply, and the parents have asserted no other good cause for their failure to timely appeal the IHO's decision. Accordingly, there is no basis on which to excuse the parent's failure to timely appeal the IHO's decision (see 8 NYCRR 279.13; see also B.D.S. v. Southold Union Free Sch. Dist., 2011 WL 13305167, at *17 [E.D.N.Y. Apr. 26, 2011] [noting that "[i]nadvertence, mistake or neglect does not constitute good cause"]).

The IHO's issuance of a "corrected" decision dated December 15, 2020 does not affect the timelines for appeal of the original IHO Decision. Moreover, even if the corrected decision were to be deemed the operative decision for purposes of determining timeliness, the request for review would be further untimely. Pursuant to the Thirteenth Revised General Order, a "Request for Review of an IHO decision dated December 15, 2020 or later shall be adjudicated in accordance with the express terms of 8 NYCRR Part 279." Accordingly, the parents would have been required to serve the request for review concerning the December 15, 2020 "corrected" decision on the district no later than Monday, January 25, 2021 (see 8 NYCRR 279.4). However, the parent's affidavit of service indicates that the parent served the district on March 1, 2021 (Parent Aff. of Service), which renders the request for review untimely under either calculation.[7]

[6] Although not relevant to the present appeal, the undersigned recently issued a 14th Revised General Order which did not further modify the timelines to appeal an IHO's decision, but continued to allow alternative service of a request for review upon a responded by "Certified Mail, Return Receipt Requested" ("Fourteenth Revised General Order Regarding Coronavirus Disease 2019 and Recommencement of Timelines under 8 NYCRR Part 279," Office of State Rev. [March 5, 2021] available at https://www.sro.nysed.gov/common/sro/files/14th-revised-general-order-3.5.21.pdf).

[7] Additionally, absent the late service provisions authorized by the tolling under the Thirteenth Revised General Order, the parents would have been required to serve the request for review upon the district no later than Monday, December 28, 2020, 40 days (with adjustments for holidays) from the date of the November 16, 2020 IHO

Finally, I note that largely due to the size of the administrative record,[8] there was correspondence between the parents, the parents' counsel and the Office of State Review prior to the service and filing of the request for review in this matter, and the timelines and procedures for commencing an appeal of an IHO decision were made clear to the parents, including the changes to those procedures set forth in the various General Orders issued by the office of State Review in order to align this office's practices to the Executive Orders issued by the Governor of the State of New York in response to the COVID-19 pandemic (see e.g., December 23 letter from the Office of State Review to Frank C. Panetta, Esq.). On January 4, 2021, the undersigned issued a letter to the parties in this matter and enclosed a copy of Thirteenth Revised General Order that addressed recommencement of the Part 279 timelines.

Because the parent failed to properly initiate this appeal by effectuating timely service upon the district, and there is no good cause asserted in the request for review as to why late service of a request for review should be excused, in an exercise of my discretion, the appeal is dismissed (8 NYCRR 279.13; see (Mount Vernon City School Dist. v. R.N., 2019 WL 169380, at *1 (Sup. Ct. Westchester Cnty Jan. 09, 2019, aff'd 188 A.D.3d 889, 889 [2nd Dep't. 2020]); New York City Dep't of Educ. v. S.H., 2014 WL 572583, at *5-*7 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late]; B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-67 [S.D.N.Y. 2013]; T.W., 891 F. Supp. 2d at 440-41; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *4-*5 [Sept. 25, 2009] [upholding dismissal of a petition served three days late]; Keramaty v. Arlington Cent. Sch. Dist., 05-CV-0006, at *39-*41 [S.D.N.Y. Jan. 25, 2006] [upholding dismissal of a petition served one day late], adopted [S.D.N.Y. Feb. 28, 2006]; Application of a Student with a Disability, Appeal No. 18-046 [dismissing request for review for being served one day late]). However, because I have determined that the parents' appeal of the IHO's decision is untimely, and must be dismissed, a consideration of the parent's substantive claims on appeal will not be conducted in this decision. I do note here, however, that upon my review of the record and IHO decision, the parents were afforded the opportunity to present their claims in full during the lengthy impartial hearing and the claims presented were also addressed at length and in substantial detail in the well-reasoned IHO decision. Perhaps most importantly I also note that, as argued by the district, the provision of significant quantities of special education services to the student over the years in question (albeit even if challenged by the parent as inappropriate) and student's successful graduation and Regents diploma would likely foreclose a finding of a gross violation warranting relief from the district at

Decision.

[8] The administrative record, while large, is not the largest addressed at the State-level within the timelines (see Application of a Student with a Disability, Appeal No. 11-059 & 11-061; Application of a Student with a Disability, Appeal No. 08-003), and neither the IDEA nor Part 279 contain a voluminous record exception to the timelines. While an IHO has the discretion to grant extensions of the 45 day timeline to allow more than two days of hearing, State regulations strongly discourage parties and IHOs from creating a 45-day administrative hearing record like this one for many reasons (8 NYCRR 200.5[j][3][xiii]), not the least of which is that federal policy prohibited administrative hearing officers from extending timelines for rendering a final decision (see, e.g. N.Y. Reg., Sept. 29, 2004, at pp. 11-12 [repealing regulatory amendments that permitted SROs additional time to address voluminous records due to IDEA non-compliance]).

this juncture given that the student is no longer eligible for special education services under the IDEA.[9]

VI. Conclusion

In view of the forgoing, the parent's request for review was not timely served and good cause for accepting a late request for review was not proffered in the request for review.

I have considered the remaining contentions, including the other defenses asserted by the district in its answer, and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 21, 2021

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JUSTYN P. BATES
STATE REVIEW OFFICER

[9] It is well settled that a student's graduation and receipt of a high school diploma is generally considered to be evidence of educational benefit (see Pascoe v. Washington Cent. Sch. Dist., 1998 WL 684583, at *4, *6 [S.D.N.Y. Sept. 29, 1998]; see also Rowley, 458 U.S. at 207 n.28; Walczak, 142 F.3d at 130), the receipt of which terminates a student's entitlement to a FAPE (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; 200.4[i]). It is a rare case where a student will graduate with a high school diploma and yet still qualify for an award of further compensatory educational services thereafter (see, e.g., Application of a Student with a Disability, Appeal No. 19-116; Application of the Bd. of Educ., Appeal No. 18-081; Application of the Bd. of Educ., Appeal No. 17-081; Application of a Student with a Disability, Appeal No. 16-079; Application of a Student with a Disability, Appeal No. 13-215; Application of a Student with a Disability, Appeal No. 13-110; Application of a Student with a Disability, Appeal No. 11-159).