The University of the State of New York

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

No. 21-153

Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:
Judy Nathan, Interim Acting General Counsel, attorneys for petitioner, by Daniel Levin, Esq.

Law Offices of Lauren A. Baum, PC, attorneys for respondents, by Lauren A. Baum, 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. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which ordered the district to reimburse respondents (the parents) for the costs of the student's tuition at the Darrow School (Darrow) for the 2018-19 school year. 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[a]). 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 and the IHO's decisions are presumed and will not be recited here in detail. In a due process complaint notice, dated July 23, 2020, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2018-19 school year, contending, in part, that there had been no CSE meeting held, no IEP developed, no prior written notice issued or received, and no public school placement recommended or offered for that school year (see Parent Ex. B at pp. 1-2).

In a motion to dismiss, dated March 3, 2021, the district argued that the parents' claims related to the 2018-19 school year, and as set forth in the July 23, 2020 due process complaint notice, were untimely and thus, barred by the statute of limitations (see generally Dist. Mot. to

Dismiss). On March 9, 2021, the parents' attorney and the IHO met for an impartial hearing (see Tr. p. 1). The IHO noted the absence of any district representative, but proceeded with the impartial hearing (see Tr. pp. 1-2). The IHO also noted that the district had filed a motion to dismiss the parents' claims for the 2018-19 school year based upon the statute of limitations, and that, pursuant to the parents' request, the IHO had granted the parents additional time to respond to the district's motion until March 29, 2021 (see Tr. pp. 2-3). As a possible basis for the district's absence, the IHO opined that the district "may have thought that this hearing date was adjourned" as a result of granting the parents more time to respond to the motion (Tr. p. 3).

According to the IHO, he would not "need a lot of time to review [the parents'] response before deciding [the district's motion to dismiss] because on its face, the motion to dismiss appear[ed] to . . . try to turn what [was] in [his] view, the movie of the [student's] education into a series of snapshots" (Tr. pp. 3-4). In addition, the IHO noted that the district appeared to argue that the absence of an "IEP review at the end of 2018, somewhere around May 27th of 2018, preclude[d] the family from filing a complaint about the student's entire educational experience that beg[an] on July 1 and continue[d] until June 30th of 2018" (Tr. p. 4).

The parents submitted opposition to the district's motion to dismiss, dated March 17, 2021 (see Parent Ex. GG at pp. 1, 10).

In an interim decision dated March 18, 2021, the IHO denied the district's motion to dismiss (see Interim IHO Decision at pp. 1, 4). Initially, the IHO indicated that the parents in this case had "repeatedly placed the district on notice that they were seeking a publicly-provided placement for this student for the 2018-19 school year," and that the parties' settlement negotiations concerning the 2018-10 school year were "ultimately unsuccessful" (id. at p. 2). In addition, the IHO noted that the district filed the motion to dismiss—based on the two-year statute of limitations—"[s]ome seven months" after the parents' due process complaint notice (id.).

Turning to the merits of the district's motion, the IHO initially indicated that "[i]t would be difficult to exhaust the list of reasons why such a motion must not only be denied but deemed to be beyond frivolous and approaching predation" (IHO Decision at p. 2). Nevertheless, the IHO found that, for "purposes of this [motion to dismiss]," it was undisputed that the student "was IEP-eligible" and that the parents' July 23, 2020 due process complaint notice was filed "some [13] months after the 2018-19 school year here under review ended, and some 23 months after it began"—and thus, was "filed less than [2] years after the period here claimed in dispute" (id.). According to the IHO, the district argued that the parents' due process complaint notice was untimely because, among other things, the 12-month school year began on July 1, 2018, and therefore, the parents "must have known that the district was in default with respect to offering the student a placement for the entire 2018-19 school year no later than July 1, 20[]18 when the prior 12-month school year ended" (id.).

Next, the IHO noted that the parents "assert[ed] that they had at one point filed a [10]-[d]ay [n]otice with respect to the summer of 2018," but that they did not now "seek to pursue that claim here" (IHO Decision at p. 2).

After reviewing the district's arguments, the IHO indicated that, in order for the district to prevail, two facts must weigh in the district's favor: first, that the student "had an entitlement to and an expectation of a 12-month program for the 2018-19 school year"; and second, that if the

student had such an entitlement, the student "could not file a claim against the district's failure to provide such a program at any time later than [two] years after the district's failure to educate him during July and August had commenced" (IHO Decision at p. 3). Here, the IHO found neither in the district's favor (id.).

Accordingly, the IHO concluded that, regardless of whether the district was "responsible for the summer of 2018," the district remained "separately responsible for the 10-month 2018-19 school year independently and on an ongoing basis" (IHO Decision at p. 3). Therefore, the IHO further concluded that, although "nothing in the [hearing] record before [him] support[ed] a finding that [the district] was responsible for that summer placement at all," the district remained obligated to "place the student no later than the end of summer school during 2018 for the upcoming school year" (id.). In light of these conclusions, the IHO denied the district's motion to dismiss (id. at pp. 3-4).

On April 29, 2021, the impartial hearing resumed, and concluded on June 1, 2021, after a total of three days of proceedings (see Tr. pp. 8-59). At the final impartial hearing date in June, the district's attorney confirmed that the district would not be presenting a "defense of its burden, other than th[e] motion to dismiss," and specifically indicated that the district would not be submitting any documentary or testimonial evidence (Tr. p. 28).

In a decision dated June 1, 2021, the IHO found that the district failed to offer the student a FAPE for the 2018-19 and 2019-20 school years (see IHO Decision at pp. 2-9). The IHO also found that the parents sustained their burden to demonstrate the appropriateness of the student's unilateral placement at Darrow and that equitable considerations weighed in favor of the parents' requested relief: as a result, the IHO ordered the district to reimburse the parents, or directly pay Darrow, for the costs of the student's tuition at Darrow for the 2018-19 and 2019-20 school years (id. at pp. 8-9).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the district's request for review and the parents' answer thereto is also presumed and will not be recited here in detail. The essence of the parties' dispute on appeal is whether the IHO correctly denied the district's motion to dismiss the matter pertaining to the 2018-19 school year—i.e., the parents' July 23, 2020 due process complaint notice—and, as a result, whether the district failed to offer the student a FAPE for the 2018-19 school year and whether the district was required to reimburse the parents for the costs of the student's tuition at Darrow for the 2018-19 school year.[1][2]

[1] The district does not appeal the IHO's findings that Darrow was an appropriate unilateral placement for the student for the 2018-19 school year, that the district failed to offer the student a FAPE for the 2019-20 school year, or the IHO's order directing the district to reimburse, or directly fund, the costs of the student's tuition at Darrow for the 2019-20 school year (see generally Req. for Rev.). Consequently, these determinations have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

[2] The district argues that SRO should excuse the late service of the notice of intention to seek review, which was, according to the district, served four days late (see Req. for Rev. ¶ 25). In the answer, the parents assert that the

V. Discussion

A. Statute of Limitations

The district appeals from the IHO's interim decision finding that the parents timely filed claims concerning the 2018-19 school year in the July 23, 2020 due process complaint notice. The IDEA provides that a claim accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint and requires that, unless a state establishes a different limitations period, the party must request a due process hearing within two years of that date (20 U.S.C. § 1415 [f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2], 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114-15 & n.8 [2d Cir. 2008]; M.D. v. Southington Bd. of Educ., 334 F.3d 217, 221-22 [2d Cir. 2003]).[3] Because an IDEA claim accrues when the parent knew or should have known about the claim, "determining whether a particular claim is time-barred is necessarily a fact-specific inquiry" (K.H. v. New York City Dep't of Educ., 2014 WL 3866430, at *16 [E.D.N.Y. Aug. 6, 2014]; see K.C. v. Chappaqua Cent. Sch. Dist., 2018 WL 4757965, at *14 [S.D.N.Y. Sept. 30, 2018] [collecting cases representing different factual scenarios for when a parent may be found to have known or have had reason to know a student was denied a FAPE]). Further, two exceptions to the statute of limitations may apply to the timelines for requesting impartial hearings. The first exception applies if a parent was prevented from filing a due process complaint notice due to the district withholding information from the parent that the district was required to provide under the IDEA (20 U.S.C. § 1415[f][3][D][ii]; 34 CFR 300.511[f][2]; 8 NYCRR 200.5[j][1][i]). A second exception may apply if a parent was prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]).[4]

Initially, the parents responded to the district's motion to dismiss the matter, arguing that their claims did not accrue until August 30, 2018, when the student began attending Darrow for the 2018-19 school year (see Parent Ex. GG at pp. 9-10). Additionally, in the answer, the parents argue that the proper "knew or should have known" date is the date when the student "began attending the Darrow School on August 30, 2020" and when the parents would be obligated to pay tuition at Darrow (Answer ¶ 22). Generally, claims related to the conduct of a CSE meeting or the contents of an IEP accrue at the time of the CSE meeting or, at the latest, upon the parent's receipt of the IEP (see F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 274 F. Supp. 3d 94, 113-14 [E.D.N.Y. 2017], aff'd, 2018 WL 4049074 [2d Cir. Aug. 24, 2018]; Bd. of Educ. of North Rockland Cent. Sch. Dist. v. C.M., 2017 WL 2656253, at *7-*9 [S.D.N.Y. June 20, 2017], aff'd, 2018 WL 3650185 [2d Cir. Aug. 1, 2018]). The Southington caselaw relied upon by the parents

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SRO should not excuse the late service, but do not present any arguments thereto (see Answer ¶¶ 18, 26). Here, even if the district served the notice of intention to seek review four days late, the parents have not alleged any prejudice from the untimely service of the notice of intention to seek review (see generally Answer).

[3] New York State has not explicitly established a different limitations period (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j][1][i]).

[4] Neither party argues that the two exceptions to the statute of limitations applies to this case (see generally Req. for Rev.; Answer; Reply).

for their accrual argument predates the specific statute of limitations passed by Congress in 2004, which became effective in 2005 (20 U.S.C. § 1415 [f][3][C]), and the alleged violations of the IDEA stem from the district's failure to convene a CSE meeting in or around May 2018 in order to develop an IEP for the 2018-19 school year, which the parents initially informed the district about in a letter to the district dated June 15, 2018 (see Parent Ex. H at p. 1; see also Parent Ex. I [reflecting the district's response to the parents' 10-day notice, dated July 3, 2018]).[5,6] According to the June 15, 2018 letter—sent to a district email, which, in part, read "10DayNotice[]"—the parents informed the district that, to date, "no CSE meeting ha[d] been held, no IEP ha[d] been developed, and no public school placement ha[d] been received" for the student for the 2018-19 school year (Parent Ex. H at p. 1). The parents indicated in the same letter that they remained "willing to consider any program or placement that may be recommended by the CSE for [the student] for the 2018-19 school year," but notified the district that, "in the interim, the parents w[ould] continue to send [the student] to . . . , a residential therapeutic program, for the summer of 2018 and w[ould] be seeking funding/reimbursement for the cost of that placement" (id.).

In addition, while the parents appeared to argue in response to the district's motion that the district engaged in bad faith settlement negotiations, and essentially terminated those negotiations on July 22, 2020—one day before the parents filed the July 23, 2020 due process complaint notice—for the purpose of surreptitiously running out the statute of limitations for the 2018-19 school year, the hearing record contains no evidence, and the parents do not point to any evidence, to establish when those negotiations took place or, significantly, what prevented the parents from filing a due process complaint notice before February 14, 2020, when the district allegedly "made a settlement offer" for the 2018-19 school year (Parent Ex. GG at pp. 3-4; see generally Tr. pp. 1-59; Parent Exs. A-Z; AA-II). Moreover, the parents point to no evidence in the hearing record that prevented the parents from filing a due process complaint notice concerning the 2018-19 school year prior to June 15, 2020, or within the two years after putting the district on notice of the student's unilateral placement via the 10-day notice of unilateral placement, dated June 15, 2018 (see generally Tr. pp. 1-59; Parent Exs. A-Z; AA-II). The hearing record also contains no evidence that the parents were prevented from filing a due process complaint notice any time after February 17, 2020—when the parents allegedly accepted the district's offer to settle the matter and then heard nothing else on the issue of settlement until, as the parents alleged, the district's most recent contact with them on July 9, 2020 (see Parent Ex. GG at pp. 3-4; see generally Tr. pp. 1-59; Parent Exs. A-Z; AA-II).

In this case, a review of the IHO's interim decision initially reveals that the IHO neither cited to, nor relied upon, any legal standard in reaching his determination that the parents timely filed the July 23, 2020 due process complaint notice (see generally Interim IHO Decision). Instead, the IHO meandered through facts, chastised the district's arguments, failed to cite to either party's

[5] In the July 23, 2020 due process complaint notice, the parents alleged, "[u]pon information and belief," that a CSE last convened for this student to develop an IEP on May 26, 2017 (Parent Ex. B at pp. 1-2). Given that State and federal regulations call for a CSE to review a student's IEP at least annually, it is reasonable to presume that the student's next annual review would occur approximately one year after May 26, 2017, or, in or around May 2018.

[6] The R.B. v. Department of Education, 2011 WL 4375694, at *4, *6 (S.D.N.Y. Sept. 16, 2011) case cited by the parents seems to be a minority viewpoint and does not overcome the reasoning of other cases to the contrary (see Answer ¶ 22).

motion papers, and then affixed the start of the 10-month school year as what could most generously be characterized as an accrual date for the purposes of analyzing a statute of limitations defense (id.). Ultimately, the IHO ignored the district's legally accurate argument that the parents either knew or should have known of the injury forming the basis of their complaint no later than June 15, 2018—the date of the parents' 10-day notice of unilateral placement for the 2018-19 school year—as the accrual date for the parents' claims regarding the 2018-19 school year, and therefore, the parents' July 23, 2020 due process complaint notice challenging the 2018-19 school year was untimely (compare Interim IHO Decision, with Dist. Mot. to Dismiss at pp. 5-6). Accordingly, the parents' claims related to the district's failure to convene a CSE meeting and to develop an IEP for the 2018-19 school year were outside the two-year statute of limitations period.

Notwithstanding the foregoing conclusion, however, one additional argument must be considered. In the answer, the parents assert that, in light of the Covid-19 pandemic, the Governor of the State of New York's Executive Order 202.8, issued on March 20, 2020—which was renewed by executive orders issued every 30 days through the issuance of the Executive Order 202.67—effectively tolled the applicable statute of limitations through November 3, 2020, and therefore, the parents' July 23, 2020 due process complaint notice concerning the 2018-19 school year was timely (see Answer ¶ 25, citing Brash v. Richards, 2021 Slip Op. 03436 [2d Dept., June 2, 2021] [holding that the executive orders constituted a tolling of the statute of limitations, as opposed to a suspension of the statute of limitations]).[7]

In response, the district initially contends that because the parents raised this argument for the first time on appeal, the argument is beyond the scope of review and is therefore barred. Alternatively, the district argues that the Governor of the State of New York's Executive Order 202.8 does not apply to federal claims brought pursuant to the IDEA, and more specifically, because New York "affirmatively adopted the two-year statute of limitations period found in the IDEA instead of setting its own time period for claims," the executive orders cannot toll the statute of limitations applicable to the parents' due process complaint notice. (Reply ¶¶ 3-6).

As the parties already know, the Governor of the State of New York issued several executive orders during the Covid-19 pandemic; within one such order, Executive Order 202.8 ("Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency)," the Governor "temporarily suspend[ed] or modif[ied] any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency" ( ). More specifically, the Governor, via Executive Order 202.8, "temporarily suspend[ed] or modif[ied], . . . the following:"

> In accordance with the directive of the Chief Judge of the State to limit court operations to essential matter during the pendency of the COVID-19 health crisis, any specific time limit for the

[7] In Application of a Student with a Disability, Appeal No. 21-124, the attorneys who appeared on behalf of the same offices in this case litigated the very same issue presented in this appeal—namely, the statute of limitations—with many, if not all, of the same arguments presented herein; notably, however, the attorneys appearing in the previous appeal neither raised nor addressed whether the executive orders tolled the limitations period in the previous appeal (see Application of a Student with a Disability, Appeal No. 21-124).

> commencement, filing, or service of any legal action, or notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules,, the court of claims act, the surrogate's court procedural act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020

(9 NYCRR § 8.202.8). For purposes of this appeal, the Governor repeated the same language in subsequent executive orders until the issuance of Executive Order 202.67 on October 4, 2020, which specifically terminated these tolling provisions as of November 3, 2020 (9 NYCRR § 8.202.167).

As codified in Education Law § 4404 and the State's implementing regulations, the statute of limitations applicable for filing a due process complaint notice appears to fall within the statutes and regulations tolled by Executive Order 202.8 through Executive Order 202.67 as the parents' attorney argues in this case (see Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j][1][i]). The district's argument that the provisions of Education Law § 4004 merely reflect a carrying out of a federal enactment under IDEA, as found in 20 U.S.C. § 1415(f), and that the Governor lacks authority to toll that federal enactment is purely a legal dispute. This argument must be further addressed by parties before a court of competent jurisdiction, or needless litigation in a substantial number of due process cases is likely to continue taxing the due process hearing system that is already unduly burdened by other systemic problems in New York City. However, until such a case is brought to a court, these matters will have to be addressed by the administrative hearing officers. Here, the parents' July 23, 2020 due process complaint notice—which would otherwise have been untimely and subject to dismissal—remained timely pursuant to the tolling provisions in the executive orders. Accordingly, the outcome IHO's determination that the statute of limitations did not bar the parents' claims related to the 2018-19 school year, while based on other clear legal error, must nevertheless be upheld as to the result.

B. FAPE and Relief—2018-19 School Year

In addition to appealing the IHO's interim decision, the district also appeals the IHO's final decision. Here, the district seeks to reverse the IHO's finding that the district failed to offer the student a FAPE for the 2018-19 school year and the IHO's order directing the district to reimburse the parents for the costs of the student's tuition at Darrow for the same school year (see Req. for Rev. at p. 1). Notwithstanding these statements in the request for review, the district admits in the request for review that a CSE did not convene to develop an IEP for the student for the 2018-19 school year, and further notes in the request review the district's concession at the impartial hearing that the district failed to offer the student a FAPE for the 2018-19 and the 2019-20 school years (id. at ¶¶ 3, 8). Moreover, at the impartial hearing, the district declined the opportunity to present any testimonial or documentary evidence to establish its burden of proof, other than submitting the motion to dismiss (see Tr. p. 28). The district does not appeal the IHO's finding that Darrow was an appropriate unilateral placement for the student (see generally Req. for Rev.). Overall, the district's request for review does not include any arguments related to how, or if, the IHO erred by finding that the district failed to offer the student a FAPE for the 2018-19 school year or by awarding tuition reimbursement (id.).

At this juncture, it is not an SRO's role to research and construct the appealing parties' arguments or guess what they may have intended (see, e.g., Gross v. Town of Cicero, 619 F.3d 697, 704 [7th Cir. 2010] [noting that appellate review does not include researching and constructing the parties' arguments]; Fera v. Baldwin Borough, 2009 WL 3634098, at *3 [3rd Cir. Nov. 4, 2009] [holding that a party on appeal should at least identify the factual issues in dispute]; Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 841 [10th Cir. 2005] [indicating that a generalized assertion of error on appeal is not sufficient]; see generally, Taylor v. American Chemistry Council, 576 F.3d 16, 32 n.16 [1st Cir. 2009]; L.I. v. Hawaii, 2011 WL 6002623, at *9 [D. Hawaii Nov. 30, 2011]; Lance v. Adams, 2011 WL 1813061, at *2 [E.D. Cal. May 6, 2011] [finding that the tribunal need not guess at the parties' intended claims]; Bill Salter Advertising, Inc. v. City of Brewton, 2007 WL 2409819, at *4 n.3 [S.D. Ala. Aug. 23, 2007]). Therefore, absent any arguments by the district regarding the IHO's finding that the district failed to offer the student a FAPE for the 2018-19 school year or the award of tuition reimbursement for that school year, there is no reason to disturb the IHO's determinations on these issues.

VII. Conclusion

Having determined that the parents' challenges to the 2018-19 school year were timely, the necessary inquiry is at an end. I have considered the remaining contentions and find it is unnecessary to address them in light of my determination above.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
August 30, 2021

JUSTYN P. BATES
STATE REVIEW OFFICER