The University of the State of New York

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

No. 14-019

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 Massena Central School District

Appearances:
Legal Aid Society of Northeastern New York, attorneys for petitioners, Cynthia A. Eyler, Esq., of counsel

Ferrara, Fiorenza, Larrison, Barrett & Reitz, PC, attorneys for respondent, Susan T. Johns, 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. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which declined to review the determination of the respondent's (the district's) manifestation determination review (MDR) team that the student's behavior was not a manifestation of his disability. The district cross-appeals the IHO's ruling that allowed the parents to file an amended due process complaint notice. The appeal must be dismissed. The cross-appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C.

§§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

On April 11, 2013, the CSE convened to conduct the student's initial review and to develop an IEP for the 2013-14 school year (Dist. Ex. 1 at p. 1). Finding the student eligible for special education as a student with a learning disability, the April 2013 CSE recommended placement in a general education classroom together with one 42-minute session of resource room services per day in a group of five (id. at pp. 1-2, 6). The April 2013 IEP also included an annual goal in the area of reading, a transition plan, and testing accommodations (id. at pp. 5-8). The student began

attending the district public school for the 2013-14 school year and received special education services consistent with the April 2013 IEP (see Tr. pp. 56-57; see also Parent Ex. E).

On November 6, 2013, a superintendent's disciplinary hearing convened and an MDR team meeting took place (see Tr. pp. 9-10, 57, 124; Parent Ex. C at p. 1).[1] The November 2013 MDR team determined that the student's conduct was not caused by or related to the student's learning disability (Tr. pp. 9-10, 33, 35-36). As a result of the superintendent's hearing, the student received in-school suspension for six months, until May 5, 2014 (see Tr. pp. 9, 13). During the period of suspension, the student was assigned to attend a classroom within the school for four hours per day with three other students (see Tr. pp. 65-66).

On November 12, 2013, the CSE convened to conduct a requested review and develop an IEP to be implemented for the duration of the student's suspension between November 12, 2013 and May 5, 2013 at the interim alternative educational setting (IAES) (see Tr. pp. 59-62; Dist. Exs. 2 at p. 1; 3 at p. 1).[2] Finding that the student remained eligible for special education as a student with a learning disability, the CSE recommended that the student receive consultant teacher services for 42 minutes per day (Dist. Ex. 2 at pp. 1-2, 6).[3] By prior written notice, dated November 12, 2013, the district provided the parents with a description of the foregoing special education services (Dist. Ex. 3 at p. 1).

A. Due Process Complaint Notice

By handwritten due process complaint notice dated November 7, 2013, the parents requested an impartial hearing for the purpose of challenging the November 6, 2013 "decision reached during the superintendent['s disciplinary] hearing" (IHO Ex. 3). On November 12, 2013, the parents filed an amended due process complaint notice and raised several ascertainable concerns regarding the superintendent's hearing of November 6, 2013 and the removal of the student to an IAES, including that: (1) the interim superintendent did "not take the time to fully read" the letters of support on behalf of the student; (2) at certain points during the hearing, the student did not understand what was being asked of him; (3) the district failed to take into consideration various factors in determining whether the "disciplinary change in placement" was appropriate; (4) the student's six-month suspension from school was predetermined; (5) the six-month suspension from school was not appropriate for the student's first offense; (6) the student did not knowingly use illegal drugs, in that he did not know that the pills he took were prescription drugs; (7) that the student's math teacher "denies students the right to go to the nurse when asked"; and (8) "after the manifestation hearing," the student's English teacher approached the parents and informed them that a previous written assignment submitted by the student possibly revealed that

[1] According to the parents, the superintendent's hearing took place in two parts (the "guilt phase" and the "penalty phase"), between which the hearing adjourned and the MDR team met (Parent Mem. of Law at pp. 2-3).

[2] State regulations define an IAES as "a temporary educational placement, other than the student's current placement at the time the behavior precipitating the IAES placement occurred" (8 NYCRR 201.2[k]). A student who is placed in an IAES shall "continue to receive educational services so as to enable that student to continue to participate in the general education curriculum. . . and to progress toward meeting the goals set out in the student's IEP" (8 NYCRR 201.2[k][1]).

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

the student may have been suffering from depression (IHO Ex. 1 at pp. 1-2). As relief, the parents requested that the IHO order the district to place the student back in his school on a full-time basis with "his record cleared" of the October 29, 2013 incident (id. at p. 2). The parents also requested that the student be placed in a different math teacher's classroom (id.).

B. Prehearing Proceedings

By letter to the IHO dated November 18, 2013, the district challenged the sufficiency of the parents' original due process complaint notice (IHO Ex. 4). The district argued that the parents' due process complaint notice sought to appeal the decision of the superintendent's hearing pursuant to section 3214 of the Education Law and that such appeals were not subject to the impartial hearing process (id.). By letter dated November 21, 2013, the IHO rejected the district's challenge to the sufficiency of the parents' due process complaint notice due to the expedited nature of the underlying proceeding, commenced by the parents pursuant to section 8 NYCRR 201.11(a) (see IHO Ex. 5 at pp. 1-2).[4] By email dated December 4, 2013, the district informed the IHO that "the district ha[d] not consented to the amendment of the [parents'] due process complaint" (IHO Ex. 6).

The hearing record indicates that the IHO conducted a prehearing conference on December 4, 2013 (see Tr. pp. 6-12; IHO Ex. 2 at p. 1).[5] By letter dated December 5, 2013, the IHO rendered several prehearing findings relative to the sufficiency of the parents' amended due process complaint notice and the scope of the impartial hearing (see IHO Ex. 2 at pp. 1-2). The IHO deemed the district to have accepted the parents' amended due process complaint notice because the district was aware of the parents' filing of an amended due process complaint notice "for some period of time"; yet, the district did not notify the IHO of its objection thereto until December 4, 2013 (id. at p. 2; see also Tr. pp. 8-9). The IHO also ruled that he would neither accept any testimony nor make any findings relative to the superintendent's disciplinary hearing because the correctness of the disciplinary decision and manner in which the disciplinary hearing was conducted were matters not subject to the impartial hearing process (IHO Ex. 2 at p. 2; see also Tr. p. 11). Also, as relevant to this appeal, the IHO further ruled that he would not "accept testimony regarding the correctness of the [MDR] procedures or its determination" because the parents did not raise a challenge to the MDR in their amended due process complaint notice (IHO Ex. 2 at p. 2; see also Tr. pp. 9-10, 21-22). Finally, the IHO found that the parents had successfully raised an issue in their amended due process complaint notice regarding the student's removal to an IAES and that the impartial hearing would therefore be limited to such issue (id.; see also Tr. pp. 11-12).

C. Impartial Hearing Officer Decision

[4] State regulations provide that a party receiving a due process complaint notice may challenge the sufficiency of that due process complaint notice by notifying the IHO in writing within 15 days of receipt of the due process complaint notice; however, "[n]o party may challenge the sufficiency of a due process complaint . . . for expedited impartial hearings conducted pursuant to [8 NYCRR] 201.11" (8 NYCRR 200.5[i][3]).

[5] The hearing record contains two copies of the IHO's December 5, 2013 letter, except that the IHO's Exhibit 7 does not include the signature of the IHO (see IHO Exs. 2; 7). Therefore, for purposes of this decision, only the IHO's Exhibit 2 is cited.

An impartial hearing was conducted on an expedited basis on December 6, 2013 (Tr. pp. 1-193; see 8 NYCRR 201.11). By decision dated December 16, 2013, the IHO dismissed the parents' amended due process complaint notice (IHO Decision at p. 10). First, the IHO reiterated his prehearing findings relative to the scope of the impartial hearing (id. at p. 4). Turning to the merits, the IHO determined that the IAES developed by the CSE afforded the student with "those services necessary to enable [the s]tudent to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's [IEP]" (id. at p. 9). Specifically, the IHO found that, in the IAES, the student received "general education academic material four hours each day" along with special education assistance in the form of a consultant teacher on a 1:1 basis, which constituted a program that "exceed[ed] his prior special education program" (id. at pp. 8-9).[6]

IV. Appeal for State-Level Review

The parents appeal and assert that the IHO erred by refusing to consider the issues of whether the student's behavior "was a manifestation of his disability" and whether the MDR "was properly, completely, adequately[,] and accurately conducted in this case." In support of their position, the parents aver that both their original and amended due process complaint notices "intended . . . to appeal the [MDR] in [the student's] case." Furthermore, the parents argue that their pro se amended due process complaint notice referred to the "manifestation hearing" and should have been read liberally and broadly by the IHO so as to include their challenge to the MDR. As relief, the parents request that the decision of the IHO be vacated and that the matter be remanded to the IHO for consideration in the first instance of the parents' challenge to the conduct and findings of the MDR team.

The district answers, generally denying the parents' assertions and requesting that the IHO's decision be upheld for the reasons stated by the IHO. The district also interposes a cross-appeal, alleging that the IHO erred in certain prehearing determinations. Specifically, the district argues that: the IHO erred in accepting the parents' amended due process complaint notice of November 12, 2013 without the district's written consent; that the IHO erred in finding that the district was estopped from claiming that it did not accept the parents' amended due process complaint notice; and that there is no provision in the State regulations allowing for amendment of a due process complaint notice in the context of an expedited hearing.

V. Applicable Standards—MDR

The procedure under the IDEA (20 U.S.C. §§ 1400-1482) that the parents contend is relevant to this case involves the process by which school officials may seek a disciplinary change in placement of a student with a disability who violates a code of student conduct (see 20 U.S.C. § 1415[k]; Educ. Law § 3214[3][g]; 34 CFR 300.530-300.537; 8 NYCRR Part 201).[7] State regulations provide that a disciplinary change in placement means a "suspension or removal from

[6] Neither party appeals the IHO's finding that the IAES was appropriate for the student (IHO Decision at p. 9). Therefore, this determination is final and binding and will not be addressed (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]).

[7] The procedures also apply to a student presumed to have a disability for discipline purposes (20 U.S.C. § 1415[k][5]; 8 NYCRR 201.2[n], 201.5; see 34 CFR 300.534).

a student's current educational placement that is either: (1) for more than 10 consecutive school days; or (2) for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year" (8 NYCRR 201.2[e]; see 20 U.S.C. § 1415[k][1][B]; 34 CFR 300.530[b][2], [c]).[8]

If a district is considering a disciplinary change in placement for a student with a disability, the district must conduct an MDR meeting "within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct" (20 U.S.C. § 1415[k][1][E][i]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[a][3]). An MDR meeting must also be conducted within 10 school days after a superintendent or IHO decides to place a student in an interim alternative educational setting (IAES) (see 8 NYCRR 201.4[a][1]-[2], 201.7[e], 201.8[a]; see also 20 U.S.C. § 1415[k][1][G], [3][[B][ii][II]; Educ. Law § 3214[3][g][3][iv], [vii]; 34 CFR 300.530[g], 300.532[b][2][ii]). The participants at the MDR meeting must include a district representative, the parents, and the "relevant members" of the CSE as determined by the parent and the district (20 U.S.C. § 1415[k][1][E][i]; Educ. Law § 3214[3][g][2][ii]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[b]). State regulations additionally require that the parent must receive written notification prior to any manifestation team meeting "to ensure that the parent has an opportunity to attend" (8 NYCRR 201.4[b]). Further, State regulations require that such written notice inform the parent of the purpose of the meeting, the names of the people expected to attend, and the parent's right to have relevant members of the CSE participate at the parent's request (id.).

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the manifestation team must review all relevant information in the student's file including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if: "(1) the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or (2) the conduct in question was the direct result of the school district's failure to implement the IEP" (8 NYCRR 201.4[c]; see 20 U.S.C. § 1415[k][1][E]; Educ. Law § 3214[3][g][3][vii]; 34 CFR 300.530[e][1]). While courts have not interpreted 8 NYCRR 201.4(c) to be exhaustive, requiring review of every piece of information contained in a student's educational file, a manifestation team must "review the information pertinent to that decision" (Fitzgerald v. Fairfax County Sch. Bd., 556 F. Supp. 2d 543, 559 [E.D. Va. 2008]).

If the result of the MDR is a determination that the student's behavior was not a manifestation of his or her disability, "the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities" (20 U.S.C. § 1415[k][1][C]; 34 CFR 300.530[c]; see Educ. Law § 3214[3][g][vi]). However, if the result of the MDR is a determination that the student's behavior was a manifestation of his or her disability, the CSE is required to conduct a functional behavioral assessment (FBA) and implement a behavioral intervention plan (BIP); or if the student already has a BIP, review the BIP and modify it as necessary to address the behavior (20 U.S.C. §

[8] If a district proposes to suspend a student with a disability for more than five school days for alleged misconduct, a superintendent's hearing is conducted in which it is first determined whether the student engaged in the alleged misconduct and, upon such a finding, it is then determined whether a disciplinary change in placement will be considered as a possible penalty (Educ. Law § 3214[3][c]; 8 NYCRR 201.9[c][1]).

1415[k][1][F][i]-[ii]; 34 CFR 300.530[f][1][i]-[ii]; 8 NYCRR 201.3). Except under "special circumstances" as defined in the IDEA and regulations, the district must also return the student to the placement from which he or she was removed or suspended (20 U.S.C. § 1415[k][1][F][iii]; Educ. Law § 3214[3][g][3][viii]; 34 CFR 300.530[f][2]; 8 NYCRR 201.4[d][2][ii]).[9] If the manifestation team determines that the student's conduct was the direct result of the school district's failure to implement the student's IEP, the district must take immediate steps to correct the deficiencies in the implementation of the student's IEP (20 U.S.C. § 1415[k][3][E][i][II]; 34 CFR 300.530[e][1][ii], [3]; 8 NYCRR 201.4[e]).

If the parent of a student with a disability disagrees with: (1) a school district's decision regarding the student's placement, including but not limited to the decision by the district to place the student in an IAES; or (2) a determination of the manifestation team, the parent may request an expedited impartial hearing (20 U.S.C. § 1415[k][3][A]; 34 CFR 300.532[c]; 8 NYCRR 201.11[a][3]-[4]; see Coleman v. Newburgh Enlarged City Sch. Dist., 503 F.3d 198, 201-02 [2d Cir. 2007]).

VI. Discussion—Scope of the Impartial Hearing

On appeal, the parents argue that the IHO impermissibly narrowed the scope of the impartial hearing by refusing to consider the parents' challenge to the conduct and determinations of the MDR team.[10] The IDEA provides that a party requesting an impartial hearing may not raise issues at the impartial hearing 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 original 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]; see, e.g., K.L. v. New York City Dep't of Educ., 530 Fed. App'x 81, 87, 2013 WL 3814669 [2d Cir. July 24, 2013]).[11]

Upon review, the hearing record supports the IHO's conclusion that the parents' amended due process complaint notice cannot be reasonably read to include a challenge to the conduct and

[9] A district and parents may agree to a change in the student's placement and, under certain circumstances, a district may continue to maintain the student in an IAES for up to 45 days (20 U.S.C. § 1415[k][1][F][iii], [G]; 34 CFR 300.530[f][2], [g]; 8 NYCRR 201.7[e], 201.8[a], 201.9[c][3]).

[10] With respect to the district's cross-appeal concerning the IHO's acceptance of the parent's amended due process complaint notice, a review of the IHO's decision indicates that the district was not aggrieved by the IHO's final determination and any review of the district's cross-appeal would not change the results of ultimate disposition (see IHO Decision at pp. 4, 7-10). Therefore, the issues raised in the district's cross-appeal will not be addressed.

[11] In support of its cross-appeal, the district raises an interesting question as to whether resort to the procedures for amendment of the due process complaint notice are even permissible in the context of an expedited hearing (see 8 NYCRR 201.11). Presumably, upon filing of the amended due process complaint notice, the timelines for the expedited hearing would restart (see 8 NYCRR 200.5[i][7][11]). However, given that State regulations do not permit extensions in expedited hearings (see 8 NYCRR 201.11[b][4]) or even allow challenge to the sufficiency of due process complaint notices (see 8 NYCRR 200.5[i][3]), the an extension achieved by virtue of an amended due process complaint would be in tension with the purpose of resolving the matter quickly through an expedited hearing. However, finding due process complaint amendments impermissible in MDR cases could have the effect of prolonging review of the issues in some instances. Under the circumstances of the present case, I need not reach this issue.

findings of the MDR team. In support of their position to the contrary, the parents aver that their amended due process complaint notice contained the phrases "manifestation of the child's disability" and "manifestation hearing" (IHO Ex. 1 at pp. 1-2). These isolated phrases, however, when read in context, refer to allegations unrelated to the MDR proceedings (id.). First, the "manifestation of the child's disability" language appears within a sentence and paragraph devoted to alleging the district's purported failure to take into consideration various factors when determining whether the disciplinary change in placement was appropriate for the student (id. at p. 1). Second, with regard to the next example cited by the parents, that sentence and paragraph discussed the parent's criticism of the student's English teacher for having failed to inform the parents earlier of her concern that the student may have been suffering from depression and the "manifestation hearing" was mentioned to describe the timing of the conversation with the teacher "after the manifestation hearing" (id. at p. 2).

Indeed, the parents' amended due process complaint notice was dedicated to challenging the superintendent's disciplinary hearing and the suspension imposed following that hearing, as evidenced by the second sentence in the amended due process complaint, which expressed the parents' raison d'être for their submission of an amended due process complaint: as " regarding the [s]uperintendent's hearing on 11-6-13" (IHO Ex. 1 at p. 1). The expedited due process procedure provided for by 8 NYRR 201.11 for the purpose of reviewing the MDR proceeding, conducted pursuant to 8 NYCRR 201.4, does not encompass a review of the superintendent's findings pursuant to Education Law § 3214 regarding whether the student engaged in the alleged conduct or whether such alleged conduct constitutes a violation of the district's code of conduct. Similarly, the relief sought in the due process complaint notice—placement of the student back at his school "as a full time student" and records related to the disciplinary action expunged—also cited by the parents as evidence that they challenged the MDR finding, would be among the relief potentially available if the parent had properly appealed the superintendent's disciplinary proceeding to Commissioner of Education (see Educ. Law § 310; 34 CFR 99.22, 300.621).[12] In light of the foregoing, and despite the liberal reading encouraged by the parents as a result of their pro se status at the time of the filing of the due process complaint notice, none of the specific passages cited in the parents' amended due process complaint notice discussed above can reasonably be read to raise a challenge to the conduct or findings of the MDR team. In addition, based upon my review of the plain language of the parents' entire amended due process complaint notice and the hearing record as a whole, the IHO did not err in limiting the scope of the impartial hearing to the appropriateness of the IAES.[13]

In addition, the hearing record shows that the district did not agree to an expansion of the issues in this case, nor did the parents attempt to further amend their due process complaint notice

[12] An SRO does not have jurisdiction to review decision made by a board of education pertaining to a superintendent's disciplinary proceeding or any resulting penalty, such appeals are submitted to the Commissioner of Education in accordance with NY Education Law § 310.

[13] The student's suspension is ongoing and continues through May 5, 2014 and the parents have made a concerted attempt to raise the issue in these proceedings to no avail; however, while the district's refusal to agree to include the MDR the issue at the impartial hearing is permissible, the district has not pointed to anything in these particular circumstances that prohibits the parents from filing a separate due process complaint notice in order to pursue their challenge to the MDR, which the district, in order to prevail in its argument in this proceeding, must agree is a different issue than what the parents raised in their due process complaint.

(see Tr. pp. 25-26 [objecting on the grounds of relevancy and "scope of th[e] proceeding" to the introduction into evidence of a psychoeducational assessment of the student]; Tr. p. 43 [objecting to the testimony of the psychologist as being "outside the scope of th[e] proceeding"]). Indeed, the district's counsel explicitly stated at the beginning of the impartial hearing that, based on what was raised in the due process complaint notice, the only issue it believed was before the IHO was the parents' challenge to the IAES (see Tr. pp. 18, 21-22).[14]

Where, as here, the parents did not seek the district's agreement to expand the scope of the impartial hearing to include any challenge to the MDR or seek to include this issue in a second amended due process complaint notice, these issues are not properly subject to review. To hold otherwise would inhibit the development of the hearing record for the IHO's consideration, and render the IDEA's statutory and regulatory provisions meaningless (see 20 U.S.C. § 1415[f][3][B]; 34 CFR 300.511[d], 300.508[d][3][i]; 8 NYCRR 200.5[j][1][ii]; see also B.P. v. New York City Dep't of Educ., 841 F. Supp. 2d 605, 611 [E.D.N.Y. 2012] [explaining that "[t]he scope of the inquiry of the IHO, and therefore the SRO . . . , is limited to matters either raised in the . . . impartial hearing request or agreed to by [the opposing party]"); M.R. v. South Orangetown Cent. Sch. Dist., 2011 WL 6307563, at *13 [S.D.N.Y. Dec. 16, 2011]). "By requiring parties to raise all issues at the lowest administrative level, IDEA affords full exploration of technical educational issues, furthers development of a complete factual record and promotes judicial efficiency by giving these agencies the first opportunity to correct shortcomings in their educational programs for disabled children" (R.B. v. Dep't of Educ. of City of New York, 2011 WL 4375694, at *6 [S.D.N.Y. Sept. 16, 2011] [internal quotations omitted]; see C.D. v. Bedford Cent. Sch. Dist., 2011 WL 4914722, at *13 [S.D.N.Y. Sept. 22, 2011] [holding that a transportation issue was not properly preserved for review by the review officer because it was not raised in the party's due process complaint notice]).

VII. Conclusion

In accordance with the foregoing and upon consideration of the entire hearing record in this case, I find that because the parents did not sufficiently raise in their amended due process complaint notice any justiciable challenge to the findings of the MDR team, or the manner in which

[14] To the extent that the Second Circuit has held that issues not included in a due process complaint notice may be ruled on by an administrative hearing officer when the district "opens the door" to such issues with the purpose of defeating a claim that was raised in the due process complaint notice (M.H. v. New York City Dep't of Educ., 685 F.3d 217, 250-51 [2d Cir. 2012]; see D.B. v. New York City Dep't of Educ., 2013 WL 4437247, at *6-*7 [S.D.N.Y. Aug. 19, 2013]; N.K. v. New York City Dep't of Educ., 2013 WL 4436528, at *5-*7 [S.D.N.Y. Aug. 13, 2013]; A.M. v. New York City Dep't of Educ., 2013 WL 4056216, at *9-*10 [S.D.N.Y. Aug. 9, 2013]; J.C.S. v. Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at *9 [S.D.N.Y. Aug. 5, 2013]; B.M. v. New York City Dep't of Educ., 2013 WL 1972144, at *5-*6 [S.D.N.Y. May 14, 2013]), in the present case, where the IHO squarely ruled upon the scope of the impartial hearing and the district continued to object to evidence outside of that defined scope (see Tr. pp. 18, 21-22, 25-26, 43; IHO Ex. 2 at p. 2), it cannot be argued that the district opened the door to these issues under the holding of M.H.

the MDR was conducted. Accordingly, the IHO did not err in limiting the scope of the impartial hearing to the appropriateness of the IAES.

THE APPEAL IS DISMISSED.

THE CROSS-APPEAL IS DISMISSED.

Dated: Albany, New York
February 28, 2014

JUSTYN P. BATES
STATE REVIEW OFFICER