The University of the State of New York

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

No. 16-014

Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Rocky Point Union Free School District

Appearances:
Kevin A. Seaman, Esq., attorney for respondent

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which determined that the educational programs respondent's (the district's) Committees on Special Education (CSE) had recommended for her daughter for the 2011-12, 2012-13, and 2013-14 school years were appropriate. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

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

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

III. Facts and Procedural History

Given the disposition of this appeal, a full recitation of the student's educational history is not warranted. Briefly, however, a Subcommittee on Special Education (CSE subcommittee) convened on May 23, 2011, to conduct the student's annual review and develop an IEP for the 2011-12 school year (Dist. Ex. 13 at p. 1). Finding the student remained eligible for special education and related services as a student with a learning disability,[1] the May 2011 CSE subcommittee recommended the student receive direct consultant teacher services four times daily

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

for 40 minutes, as well as speech-language therapy twice weekly in a small group for 30 minutes (id. at pp. 1, 7). The May 2011 IEP also provided for testing accommodations of extended time, a separate location, checks for understanding, and for all directions and tests other than for reading comprehension be read aloud to her (id. at p. 8).

A CSE subcommittee convened on March 20, 2012, to conduct the student's annual review and develop an IEP for the 2012-13 school year (Dist. Ex. 14 at p. 1). The CSE subcommittee continued the recommendation for direct consultant teacher and speech-language therapy services from the May 2011 IEP, as well as testing accommodations (id. at pp. 1, 6-7).

A CSE subcommittee convened on January 24, 2013, to amend the student's IEP for the remainder of the 2012-13 school year, as well as to conduct the student's annual review and to develop an IEP for the 2013-14 school year (Dist. Ex. 10 at pp. 1-2, 11-12; see Dist. Ex. 8 at p. 3). With respect to the remainder of the 2012-13 school year, the January 2013 CSE subcommittee recommended a 15:1 special class placement for reading, English, and math, each for one 42-minute period per day, direct consultant teacher services for one 42-minute period per day, and speech-language therapy in a small group for 42 minutes twice weekly (Dist. Ex. 10 at pp. 11, 17). The CSE also recommended that the student receive copies of class notes in all academic classes as a supplementary aid, and continue receiving test accommodations (id. at pp. 17-18). For the 2013-14 school year, the January 2013 CSE subcommittee recommended a 15:1 special class placement for language arts and reading, each for one 42-minute period per day, direct consultant teacher services for three 42-minute periods per day, and speech-language therapy in a small group for 42 minutes, twice per week (id. at pp. 1, 7). The IEP recommended the same supplementary aids and testing accommodations as specified above for the remainder of the 2012-13 school year (id. at pp. 8-9).

A. Due Process Complaint Notice

By due process complaint notice dated February 24, 2014, the parent requested an impartial hearing (Dist. Ex. 1). The parent alleged that the district denied the student a free appropriate public education (FAPE) for the 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14 school years (Dist. Ex. 1 at p. 3). The parent also alleged that the district failed to evaluate the student in all areas of need and failed to address the student's academic and social/emotional needs (id. at pp. 2-3). The parent further contended that the district failed to report the student's progress, specifically claiming that the district did not disclose the student's reading level (id. at p. 3). The parent also asserted that the student's then-current program and placement was not appropriate, and that the student had not made progress in reading, writing, and math (id. at p. 2). The parent further argued that the student required extended school day services (id. at p. 3). In addition, the parent contended that the district failed to address the student's assistive technology needs (id. at p. 2). The parent also asserted that the district did not develop appropriate goals for the student and did not provide sufficient levels of speech-language therapy or parent counseling and training (id. at p. 3). As relief, the parent requested that the district fund a number of independent evaluations; recommend an integrated co-teaching (ICT) classroom placement; provide 1:1 instruction in reading and writing; provide individual counseling as a related service; provide assistive technology devices and support services; provide a full-time 1:1 teaching assistant; provide extended school day resource room services; as well as compensatory 1:1 educational services in the areas of reading, writing, and math (id. at pp. 2-4).

B. Impartial Hearing Officer Decision

A prehearing conference was held November 21, 2014 (Nov. 21, 2014 Tr. pp. 1-20). The parties informed the IHO that a partial settlement agreement had been reached during the resolution period, pursuant to which the district had completed certain evaluations and therefore that issue was no longer "active" (Nov. 21, 2014 Tr. pp. 5, 11; see Dist. Ex. 12). The impartial hearing proceeded on the merits on December 16, 2014, and concluded on September 11, 2015, after seven hearing dates (Tr. pp. 1-779).

By decision dated January 14, 2016, the IHO determined that the district offered the student a FAPE for the 2011-12, 2012-13, and 2013-14 school years (IHO Decision at p. 29).[2] The IHO found that the relevant IEPs provided for appropriate services and were reasonably calculated to allow the student to receive educational benefits in the least restrictive environment (id.). The IHO noted that the parent never challenged any of the student's IEPs prior to filing the due process complaint notice and found that the district followed "all necessary educational procedures" (id.). The IHO determined that the CSE considered relevant evaluative information, the student's needs were reflected in the present levels of performance, and the recommendations developed addressed the student's needs in the areas of reading, decoding, comprehension, written expression, reasoning, and organizational skills (id. at pp. 31-32). The IHO declined to order 1:1 reading instruction, finding that the student had received individualized reading instruction and had made progress that, while inconsistent, was commensurate with her ability and enabled her to achieve passing marks and advance from grade to grade (id. at pp. 30-31). The IHO further found that the parent's requested relief for compensatory reading instruction exceeded the requirement that the student's educational program be appropriate (id. at p. 30). In denying all of the parent's requested relief, the IHO found that the 2011-12, 2012-13, and 2013-14 IEPs were developed with the participation and consent of both parents, provided for personalized instruction with sufficient support services to permit the student to benefit educationally, and were reasonably calculated to enable the student to achieve passing marks and advance from grade to grade (id. at p. 32).

IV. Appeal for State-Level Review

The parent appeals and alleges that the IHO erred in determining that the district offered the student a FAPE. The parent argues that the student requires 1:1 instruction in reading and writing. The parent "reasserts all allegations" made in the due process complaint notice and asserts that the student has not made appropriate progress. The parent also claims that the IHO failed to timely commence the impartial hearing and failed to timely render a decision.

---

[2] The parent's due process complaint notice alleged that the district failed to offer the student a FAPE for the 2009-10, 2010-11, 2011-12, 2012-13, and 2013-14 school years, but also asserted that the district had failed to offer the student a FAPE "for the last two school years and since the 5th grade" (2011-12 school year) (Dist. Ex. 1 at p. 3). The parent's advocate at the impartial hearing conceded during the prehearing conference that the scope of the hearing was limited to the date of the due process complaint notice and "going back two years" (Nov. 21, 2014 Tr. pp. 4, 11). The IHO noted the district's position that the parent's claims for the 2009-10 and 2010-11 school years were beyond the two-year limitations period; however, he made no findings to that effect explicitly dismissing the parent's claims relating to those years (compare IHO Decision at p. 5, with IHO Decision at p. 29). It appears that the IHO intended to make such a finding given that he addressed the 2011-12 school year through the 2013-14 school year in his decision (IHO Decision at pp. 29-32).

In an answer, the district denies the parent's allegations and argues to uphold the IHO's decision in its entirety. In addition, the district asserts that the parties mutually agreed to extend the hearing timelines during the proceedings and that the parent was not prejudiced. The district also asserts that the petition was not timely served and does not conform to the regulations governing practice before the Office of State Review, and should therefore be dismissed.

V. Discussion

A. Initiation and Timeliness of Appeal

As an initial matter, the parent's appeal must be dismissed for non-compliance with the regulations governing practice before the Office of State Review. An appeal from an IHO's decision to an SRO must be initiated by timely personal service of a verified petition and other supporting documents upon a respondent (8 NYCRR 279.2[b], [c]). A petition must be personally served within 35 days from the date of the IHO's decision to be reviewed (8 NYCRR 279.2[b]). State regulations expressly provide that if the IHO's decision was served by mail upon the petitioner, the date of mailing and four days subsequent thereto shall be excluded in computing the period within which to timely serve the petition (8 NYCRR 279.2[b], [c]). The party seeking review shall file with the Office of State Review the petition, and notice of intention to seek review where required, together with proof of service upon the other party to the hearing, within three days after service is complete (8 NYCRR 279.4[a]; see 8 NYCRR 279.2). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11). State regulations provide an SRO with the authority to dismiss sua sponte an untimely petition (8 NYCRR 279.13; see Application of the Dep't of Educ., Appeal No. 12-120 [dismissing a district's appeal for failure to timely effectuate personal service of the petition on the parent]; Application of the Bd. of Educ., Appeal No. 12-059 [dismissing a district's appeal for failure to initiate the appeal in a timely manner with proper service]; Application of a Student with a Disability, Appeal No. 12-042 [dismissing parent's appeal for failure to properly effectuate service of the petition in a timely manner]; Application of a Student with a Disability, Appeal No. 11-013 [dismissing parent's appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 11-012 [dismissing parents' appeal for failure to timely effectuate personal service of petition upon the district]). However, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the time specified for good cause shown (8 NYCRR 279.13). The reasons for the failure to timely seek review must be set forth in the petition (id.).

In this case, the parent failed to initiate the appeal in accordance with the timelines prescribed in Part 279 of State regulations. The findings of fact and decision of the IHO was dated January 14, 2016 (IHO Decision at p. 32). Even if the IHO's decision was transmitted to the parties by mail, the parent was required to personally serve the petition upon the district by no later than February 23, 2016 (see 8 NYCRR 279.2[b]). However, the petition was first served upon the district on March 4, 2016 (see Parent Aff. of Service). Accordingly, the service of the petition upon the district was untimely. Additionally, while an SRO may, in his or her sole discretion, excuse a failure to timely seek review, the reasons for the failure must be set forth in the petition (see 8 NYCRR 279.13). Here, the parent failed to assert good cause—or any reason whatsoever—

in her petition for the failure to timely initiate the appeal, and instead the parent's process server indicated the reasons for failing to timely initiate the appeal in his affidavit of service.

Even assuming that the parent could set forth good cause for the failure to timely seek review in the affidavit of service as opposed to the petition, the reasons stated in this case—that the district offices were closed during winter break, the district clerk is a part-time employee, and an unspecified number of attempts were made to serve the petition prior to March 4, 2016—do not constitute good cause. "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]). State regulations allow personal service upon a school district through the district clerk, any member of the board of education, the superintendent of schools, or to a person in the office of the superintendent designated to accept service (8 NYCRR 275.8[a]; see 8 NYCRR 279.1[a]). In addition, if a respondent cannot be found upon diligent search, State regulations contemplate alternate forms of personal service and parties may also seek authorization for alternate forms of personal service from a State Review Officer (8 NYCRR 275.8[a]; see 8 NYCRR 279.1[a]). The parent provides no evidence that she attempted personal service upon the district through any of the individuals—other than the district clerk—identified by regulation, that any of the individuals identified by regulation could not be found upon diligent search, or that the parent contacted the Office of State Review to seek permission for an alternate means of personal service during her attempts to effectuate service on or before March 4, 2016. The parent has provided copies of correspondence sent by the parent's advocate that reveal he was advised by counsel for the district on February 12, 2016 that the district offices were open on that day, but would be closed the following week. The next email correspondence is dated March 4, 2016, wherein the parent's advocate again contacted counsel for the district stating that he had served the petition on the district's head of human resources. Counsel for the district responded a few hours later and accepted service on the district's head of human resources, effectively waiving the requirement for personal service (see Application of the Bd. of Educ., Appeal No. 12-207; Application of the Bd. of Educ., Appeal No. 12-100; Application of the Dep't of Educ., Appeal No. 08-056; Application of the Dep't of Educ., Appeal No. 07-037; Application of the Bd. of Educ., Appeal No. 05-067). However, because the parent did not timely serve the petition upon the district or otherwise set forth good cause for the failure to timely initiate this appeal in the petition, and there being no basis on which to excuse the untimeliness, the parent's appeal must be dismissed.

Accordingly, the IHO's determination that the district offered the student a FAPE for the 2011-12, 2012-13, and 2013-14 school years has become final and binding on the parties (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see also M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). However, out of an abundance of caution and notwithstanding the parent's failure to timely initiate this appeal, I have reviewed the entire hearing record and find the parent was given the opportunity to be heard at the impartial hearing, consistent with the requirements of due process, and that the IHO rendered a thorough and well-reasoned decision and properly determined that the district offered the student a FAPE for the 2011-12, 2012-13, and 2013-14 school years.

B. Timeliness of Hearing and IHO Decision

In addition to the FAPE claims contained in the parent's petition, she also asserts claims related to the timeliness of the impartial hearing and the IHO's decision. Out of an abundance of caution and notwithstanding the parent's failure to timely initiate this appeal, I will also address the parent's claims concerning the hearing and decision.

The parent argues that the hearing did not commence until nine months after the date of the due process complaint notice and that the IHO failed to render a timely decision. Although the parent asserts that she was denied a timely hearing and requests that sanctions be imposed against the IHO, she does not allege that the student suffered prejudice, or was denied a FAPE, as a result of the IHO's failures to timely commence the impartial hearing and render a decision within the 45-day timeline prescribed by the IDEA and State regulations.

When a parent files a due process complaint notice, the impartial hearing or prehearing conference must commence within 14 days of the IHO receiving the parties' written waiver of the resolution meeting, or the parties' written notice that mediation or a resolution meeting failed to result in agreement, or the expiration of the 30-day resolution period; unless the parties agree in writing to continue mediation at the end of the resolution period (8 NYCRR 200.5[j][3][iii][b][1]-[4]). If the parties agree to continue mediation, the hearing or prehearing conference must commence within 14 days of the IHO receiving written notice that either party has withdrawn from mediation (8 NYCRR 200.5[j][3][iii][b][4]). The IHO is required to render a decision not later than 45 days after the expiration of the resolution period (34 CFR 300.510[b], [c]; 300.515[a]; 8 NYCRR 200.5[j][5]), unless an extension has been granted at the request of either party (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5][i]).

An IHO may grant extensions beyond these timeframes, however such extensions may only be granted consistent with regulatory constraints and an IHO must ensure that the hearing record includes documentation setting forth the reason for each extension and that an extension "shall be for no more than 30 days" (8 NYCRR 200.5[j][5][i]). Absent a compelling reason or a specific showing of substantial hardship, "a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, avoidable witness scheduling conflicts or other similar reasons" (8 NYCRR 200.5[j][5][iii]). Moreover, an IHO "shall not rely on the agreement of the parties as a basis for granting an extension" (id.).

The hearing record indicates that the due process complaint notice was filed on February 24, 2014 and the IHO was appointed on March 17, 2014 (Dist. Exs. 1; 3). The hearing record also includes a list of participants in a resolution session held on March 17, 2014 (Dist. Ex. 12). According to this document, the outcome of the resolution session was a partial agreement, wherein the district agreed to fund three evaluations and to amend the student's IEP to include counseling (id.). The document was signed by the student's parents and the district's director of special education (id.).

In an answer, the district asserts that the parties mutually requested extensions of the timelines to permit the district to complete and review the three evaluations funded by the district pursuant to the partial resolution agreement (Answer ¶ 4[g]-[m]). According to the district, a CSE

convened on August 12, 2014 and October 6, 2014 to review the evaluations (Answer ¶ 4[k], [l]). The district further asserts that the parties failed to reach a final resolution and thereafter scheduled a prehearing conference (Answer ¶ 4[p]).

Consistent with the district's position, the transcript of the November 21, 2014 prehearing conference does not include any discussion of or objections to the length of time that had elapsed from the date of the due process complaint notice to the prehearing conference (see Nov. 21. 2014 Tr. pp. 1-20). During the fourth day of the hearing, however, the parent's advocate stated that the parent had not requested any extensions and questioned why the start of the hearing had been delayed (Tr. pp. 427-28). The IHO stated on the record that the parent should be "aware . . . that this case has been adjourned several times by your advocate" (Tr. p. 432). The parent's advocate conceded that he had requested extensions after the hearing began, but insisted that he had not consented to extending the timeline for commencing the hearing or prehearing conference (Tr. pp. 432-34). The IHO disputed the advocate's statement, indicating that the district notified him in August and September 2014 of its attempts to settle with the parent and that the parent had failed to communicate whether or not she would accept the proposed resolution and withdraw her due process complaint (Tr. pp. 438-39). The parent's advocate argued that settlement discussions would not affect the regulatory timelines (Tr. p. 439). The IHO responded that "[i]t can if it's under consent of the parties and I never heard from you to the contrary" (Tr. p. 439).

As indicated above, State regulations permit an IHO to extend the timelines to commence an impartial hearing or prehearing conference; nevertheless, specific criteria must be met in order to grant an extension request and "[t]he reason for each extension must be documented in the hearing record" in a written response to the request for extension (8 NYCRR 200.5[j][5][i], [iv]; see also 8 NYCRR 200.5[j][3][iii][b][1]-[4]). Other than the discussion on the fourth day of the hearing, the IHO did not document in the hearing record having received any requests for an extension, his consideration of any requests, or his ultimate grant of such a request during the time period from his appointment on March 17, 2014, through the prehearing conference held on November 21, 2014. Accordingly, because there is no indication in the hearing record that the parties agreed in writing to continue mediation at the end of the resolution period, the parent is correct that the IHO failed to document that he held a prehearing conference or commenced the impartial hearing within the time required by State regulation.

The parent also alleges that the IHO failed to render a final decision within the regulatory timeline. If an IHO has granted an extension to the regulatory timelines, the IHO must issue a decision within 14 days of the date the IHO closes the hearing record (8 NYCRR 200.5[j][5]). The IHO's decision indicates that the record close date was January 11, 2014; however, during the impartial hearing the IHO directed the parties to submit their post-hearing briefs by October 23, 2015 (IHO Decision at p. 1; Tr. pp. 774-75). According to State regulation, an IHO shall determine when the record is closed and notify the parties of the date the record is closed (8 NYCRR 200.5[j][5][v]). State regulation also requires the hearing record to include "all written orders, rulings or decisions issued in the case including . . . an order granting or denying an extension of the time in which to issue a final decision in the matter" (8 NYCRR 200.5[j][5][vi][c]).

There is nothing in the hearing record that would explain the reason for the delay between when closing briefs were due on October 23, 2015 and when the IHO's written decision was issued

on January 14, 2016. Furthermore, there is no explanation why the record was not determined to be closed by the IHO until January 11, 2016 (IHO Decision at p. 1). While State regulation provides that an IHO determines when the record is closed, guidance from the Office of Special Education explains that "[a] record is closed when all post-hearing submissions are received by the IHO . . . Once a record is closed, there may be no further extensions to the hearing timelines [and] the written decision of the IHO must be rendered and mailed within 14 days" of the record close date ("Changes in the Impartial Hearing Reporting System," Office of Special Educ. [Aug. 2011], available at http://www.p12.nysed.gov/specialed/dueprocess/ChangesinIHRS-aug2011.pdf; see 8 NYCRR 200.5[j][5][iii]). Following the above guidance, the IHO's decision in this matter should have been rendered and mailed within 14 days of October 23, 2015.

Based on the foregoing, it is apparent that the IHO did not properly document extensions to the timelines to commence the impartial hearing or timely render a decision. Even so, there is no evidence to suggest that the parent or student suffered any prejudice as a result of these delays. Moreover, the parent has not alleged that the IHO's failures to timely commence the impartial hearing and to render a timely decision have resulted in a denial of a FAPE to the student. Accordingly, even if the parent's petition had been timely, the record does not provide a basis for a finding that the delays complained of rose to the level of a denial of a FAPE under the particular circumstances of this case (see Application of a Student with a Disability, Appeal No. 13-238; Application of a Student with a Disability, Appeal No. 12-130). Nevertheless, given that a decision in this matter was not rendered within the 45-day timeline, I remind the IHO that a student may be prejudiced by delay and that he must comply with the applicable timelines.

VI. Conclusion

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 8, 2016

CAROL H. HAUGE
STATE REVIEW OFFICER