The University of the State of New York

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

No. 21-054

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

Appearances:
Judy Nathan, Interim Acting General Counsel, attorneys for respondent, by Cynthia Sheps, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeals from the decision of an impartial hearing officer (IHO) which denied their request that respondent (the district) fund the costs of special education services and compensatory education services at an enhanced rate for the 2019-20 and 2020-21 school years.[1] The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law §3602-c). The task of creating an IESP is assigned to the same committee that designs educational programing for students with disabilities under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482), namely a local Committee on

[1] Although the request for review lists only the student's mother as the petitioner, the notice of request for review lists the student's father as the petitioner, the father signed the verification, and the remaining pleadings in this matter reference both parents as petitioners, including the district's answer and the parents' reply. Under the circumstances, both parents are deemed to be petitioners in this matter.

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 related to IESPs, State law provides that "[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-c[2][b][1]). Incorporated among the procedural protections of the IDEA and the analogous State law provisions 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 matter on procedural grounds, a detailed recitation of facts relating to the student is not necessary.

The parents placed the student at a parochial school when he was four years old, which he continued to attend for the school years at issue in this matter (see Parent Exs. D at p. 1; E at p. 1; J at p. 1; Dist. Exs. 4 at p. 1; 5 at pp. 1-2). The student was found eligible for special education through the Committee on Preschool Special Education (CPSE), which recommended five hours per week of 1:1 special education itinerant teacher (SEIT) services, along with two 30-minute sessions per week of individual occupational therapy (OT) services on an IEP dated on July 10, 2018 (Parent Ex. C at pp. 1, 9, 10). The student received SEIT services through a private agency, EvalCare Inc., during the 2018-19 school year (Parent Ex. D at p. 1).

On August 2, 2019, a CSE convened to develop an IESP for the student for the 2019-20 school year (first grade) (Dist. Ex. 7 at pp. 1, 7). The August 2019 CSE found the student eligible for special education as a student with an other health impairment and recommended that the student receive three periods per week of direct group special education teacher support services (SETSS) and one 30-minute session per week of group OT services (id. at pp. 1, 6).[2]

For the 2019-20 school year, the student continued to receive SEIT services through the private agency, EvalCare Inc. (Parent Exs. E at p. 1; F).

In a due process complaint notice dated December 18, 2019, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) or equitable services for the 2019-20 school year (Parent Ex. A at p. 3). As relief, the parents sought an order directing the district to provide the student with five hours per week of SEIT or comparable services and two 30-minute sessions per week of OT services for the 2019-20 school year, and to implement all special education services as necessary at the market rate (id.). The parents further requested an order identifying the student's stay-put placement during the pendency of the proceedings as the last agreed upon IEP dated July 10, 2018 (id. at p. 4).

On April 13, 2020, the parents and district entered into an agreement that the July 10, 2018 IEP was the last agreed upon IEP for the student and that the student's pendency placement consisted of five hours per week of 1:1 SEIT services at a rate to be determined by the district's implementation unit and two 30-minute sessions per week of individual OT services (Parent Ex. B at p. 2).[3]

[2] The student's eligibility for special education as a student with an other health impairment is not in dispute in this proceeding (34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

[3] According to the student's mother, the district directly paid EvalCare Inc. for the student's pendency SEIT services beginning on December 2, 2019 (Parent Ex. K at p. 3). The parent also indicated that the student received one 30-minute session per week of OT during the 2019-20 school year but that the district did not implement the student's pendency OT mandate of two 30-minute sessions per week (id. at pp. 3-4).

The IHO held prehearing conferences with the parties on June 10, 2020 and July 6, 2020 (Tr. pp. 1-25; IHO Exs. I; II).

According to the parent, the district "failed to create any program" for the student for the 2020-21 school year and that, therefore, she "contracted with" a private agency, Special Edge, Inc., to provide services to the student for the 2020-21 school year (Parent Ex. K at p. 4; see Parent Ex. J at p. 1).

In a due process complaint notice dated September 13, 2020, the parents alleged that the district failed to offer the student a FAPE or equitable services for the 2020-21 school year (Parent Ex. G at pp. 1-2). As relief, the parents sought an order directing the district to provide the student with five hours per week of SEIT or comparable services and two 30-minute sessions per week of OT services for the 2020-21 school year, and to implement all special education services as necessary at the market rate (id. at pp. 2-3). The parents further requested an order finding that the student's pendency placement was based on the last agreed upon IEP dated July 10, 2018 (id. at p. 2).

In an interim decision dated October 16, 2020, the IHO consolidated the parents' December 18, 2019 and September 13, 2020 due process complaint notices (IHO Ex. III). Another prehearing conference took place on October 21, 2010 (Tr. pp. 26-46; IHO Ex. IV).

A CSE convened on October 29, 2020 and developed an IESP for the student (Parent Ex. H). Having found that the student continued to be eligible for special education as a student with an other health impairment, the October 2020 CSE recommended that the student receive five periods per week of direct group SETSS and one 30-minute session per week of individual OT services (id. at pp. 1, 8).

On November 23, 2020, the parents filed an amended due process complaint notice to add allegations relating to the October 2020 IESP (Nov. 2020 Amended Due Process Compl. Notice).

An impartial hearing convened and concluded on December 2, 2020 (Tr. pp. 47-105). In a decision dated December 29, 2020, the IHO determined that the district failed to provide the student with appropriate special education services on an equitable basis for the student's 2019-20 and 2020-21 school years (IHO Decision at pp. 12-14, 17). For the 2019-20 school year, the IHO found that student's IESP was appropriate; however, the IHO found that the district failed to provide the student with a "SEIT/SETSS" provider at the start of the 2019-20 school year (id. at pp. 12-13). With respect to the 2020-21 school year, the IHO found that the district failed to have an IESP in place for the student at the start of the school year and that the district failed to meet its burden to prove the previously recommended SETSS met the student's need for 1:1 instruction (id. at pp. 13-14). The IHO also noted that the district did not provide the student with all of the pendency services to which she was entitled (id. at pp. 12-13, 14, 15).

As relief, the IHO ordered the district to provide the following as compensatory educational services: (1) a bank of 60 hours of SETSS sessions at a rate not to exceed $110 per hour for the 2019-20 school year to be used by January 15, 2022; and (2) a bank of 42 1:1 30-minute OT sessions at the standard rate for the 2019-20 and 2020-21 school years to be used by January 15, 2022 (IHO Decision at p. 17). The IHO also ordered the district to provide the student with five

hours per week of 1:1 SETSS for the ten-month school year at a rate not to exceed $110 per hour (id. at pp. 16-17).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues raised in the parents' request for review, the district's answer thereto, and the parents' reply is presumed and will not be recited here in detail other than as discussed below as applicable to the timeliness of the appeal. Generally, the central issue raised by the parties' on appeal is whether the IHO erred in finding that the August 2019 IESP offered appropriate equitable services for the student for the 2019-20 school year and in awarding the student's SETSS services and compensatory education services for the 2019-20 and 2020-21 school years at a rate not to exceed $110 per hour; however, the parents' request for review must be dismissed as untimely for the reasons set forth below.[4]

V. Discussion—Timeliness of Appeal

An appeal from an IHO's decision to an SRO must be initiated by timely personal service of a verified request for review and other supporting documents upon a respondent (8 NYCRR 279.4[a]). A request for review must be personally served within 40 days after the date of the IHO's decision to be reviewed (id.). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11[b]). State regulation provides an SRO with the authority to dismiss sua sponte an untimely request for review (8 NYCRR 279.13; see e.g., Application of the Board of Educ., Appeal No. 17-100 [dismissing a district's appeal for failure to timely effectuate personal service on the parent]; Application of a Student with a Disability, Appeal No. 16-014 [dismissing a parent's appeal for failure to effectuate service in a timely manner]). However, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the 40-day timeline for good cause shown (8 NYCRR 279.13). The reasons for the failure must be set forth in the request for review (id.). "Good cause for late filing would be something like postal service error, or, in other words, an event that the filing party had no control over" (Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *5 [N.D.N.Y. Dec. 19, 2006]; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012]).

Due to the COVID-19 pandemic, between March 2020 and March 2021, the Chief State Review Officer issued a series of General Orders permitting alternate forms of service of pleadings and prescribing that the COVID-19 pandemic had been deemed good cause to serve a late request for review ("Coronavirus (COVID-19) Updates," Office of State Rev., available at https://www.sro.nysed.gov/coronavirus-covid-19-updates). The Child State Review Officer's

[4] The district asserts in its answer that the SRO should reject the parents' request for review for failing to comply with the regulatory requirement that a request for review be verified by the parent filing the request for review. Specifically, the district notes that the student's father signed the verification accompanying the request for review, while the student's mother is named as the "petitioner" on the request for review. State regulations provide that "[t]he request for review shall be verified by the oath of at least one of the petitioners" (8 NYCRR 279.7[b]). As noted above, both parents have been variously referenced as the petitioner(s) in this matter and, under the circumstances, I decline to exercise my discretion to reject the request for review on this basis.

General Orders aligned with provisions of the Governor of the State of New York's Executive Order 202.8 and extensions thereto that tolled the timelines for initiating a legal proceeding, although the General Orders were briefly continued beyond the final extension of the tolling provisions of Executive Order 202.8 in order to reinitialize the multiple timelines in Part 279 a controlled and orderly manner.[5]

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

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

("Thirteenth Revised General Order Regarding Coronavirus Disease 2019 and Recommencement of Timelines under 8 NYCRR Part 279," at p. 4, Office of State Rev. [Dec. 31, 2021] [bolded emphasis in the original; underlined emphasis added], available at https://www.sro.nysed.gov/common/sro/files/13th-revised-general-order-12.31.20_1.pdf).[6]

Because the IHO decision in the present matter is dated December 29, 2020 (see IHO Decision at p. 18), pursuant to the Thirteenth Revised General Order, the relevant timeline for serving a request for review of the IHO decision is that found under the express terms of 8 NYCRR

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

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

part 279. The parents failed to initiate the appeal in accordance with the timelines prescribed in Part 279 of the State regulations. The parents were required to serve the request for review upon the district no later than February 8, 2021, 40 days from the date of the December 29, 2020 IHO decision (see 8 NYCRR 279.4[a]).[7] However, the parents' affidavit of service indicates that the parents served the district on February 12, 2021 (Feb. 12, 2021 Parent Aff. of Service), which renders the request for review untimely.

Additionally, the parents have failed to assert good cause in their request for review for the failure to timely initiate the appeal from the IHO's decision. In their request for review, the parents asserts that, although the IHO decision was dated December 29, 2020, the "Impartial Hearing Unit was on holiday break for the New Year" and thus a copy of the IHO decision was not provided to their advocate until January 4, 2021 (Req. for Rev. ¶ 1). The parents argue that their request for review is timely because it was "submitted within 40 days of the receipt of the [IHO Decision]" (id.; Reply ¶ 2). However, the time period for appealing an IHO decision begins to run based upon the date of the IHO's decision and State regulations regarding timeliness do not rely upon the date of a party's receipt of an IHO decision—or the date the IHO transmitted the decision by e-mail—for purposes of calculating the timelines for serving a request for review (see 8 NYCRR 279.4[a]; Mt. Vernon City Sch. Dist. v. R.N., 2019 WL 169380 [Sup. Ct. Westchester Cnty. Jan. 9, 2019] [upholding the dismissal of an SRO appeal as untimely, as calculation of the 40-day time period runs from the date of an IHO decision, not from date of receipt via email or regular mail], aff'd 188 A.D.3d 889 [2d Dep't 2020]; Application of a Student with a Disability, Appeal No. 19-043; Application of a Student with a Disability, Appeal No. 16-029; Application of a Student with a Disability, Appeal No. 10-081; Application of a Student with a Disability, Appeal No. 10-034; Application of a Student with a Disability, Appeal No. 08-043; Application of a Child with a Disability, Appeal No. 04-004). Therefore, the actual date that the IHO's decision is transmitted to the parties or the actual date either of the parties receives the IHO's decision is not relevant to the calculus in determining whether a request for review is timely.

Further, to the extent that the parents are asserting a delay in receipt of the IHO's decision contributed to any lateness in the service of the request for review, there may be circumstances that are outside a party's control identifying such instances as those in which the 40-day time period has either: 1) already expired; or 2) is much closer to expiring and there is no reasonable way in which a party could prepare and serve an appeal within the remaining time frame (see Application of a Student with a Disability, Appeal No. 20-030; Application of a Student with a Disability, Appeal No. 20-029). However, this case presents neither circumstance, especially considering that the request for review consists of relatively limited issues regarding the district's offer of equitable services in the August 2019 IESP and the relief awarded by the IHO.[8] Moreover, the parents had

[7] More specifically, the parents were required to serve the district no later than February 8, 2021 because the 40th day from the date of the IHO decision fell on a Sunday and State regulations permitted service of the request for review on the following business day, which, in this matter, was Monday, February 8, 2021 (see 8 NYCRR 279.11[b]).

[8] With regard to the alleged delay in the issuance of the IHO's decision, on the notice of intention to seek review, the parents reference that the decision was issued by the district's impartial hearing office. Notwithstanding that the IDEA does not preclude a school district from taking on ministerial actions to assist IHOs in issuing decisions (i.e. formatting, copying, postage), State regulation provides that the IHO "shall render a decision, and mail a

ample time (31 days) to timely serve the request for review upon receipt of the IHO decision received on January 4, 2021. Accordingly, there is insufficient basis to exercise my discretion and excuse the parents' failure to timely appeal from the IHO's decision (see 8 NYCRR 279.13).

As a final matter, the parents also attempt to assert good cause in their request for review to justify the late service of their notice of intention to seek review. In their request for review, the parents indicate that the late service of the notice of intention to seek review, served on January 29, 2021, was "due to the parents and family contracting the novel Covid-19 virus and their resulting illness, quarantine and hospitalization" (Req. for Rev. ¶ 2).[9] Although I am sympathetic that both parents tested positive for Covid-19 and the student's mother was hospitalized while pregnant, even assuming that these reasons might have constituted good cause, the parents offer

copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents" (8 NYCRR 200.5[j][5]). To the extent the impartial hearing office is holding IHO decisions for a period of time before delivering them to the parties, in addition to affecting the parents' time to prepare an appeal as discussed herein, this practice has the potential to violate federal and State regulations governing the timelines for IHOs to render decisions and impede the due process protections afforded to students with disabilities and their parents (see 34 CFR 300.510[b][2]; [c]; 300.515[a]; 8 NYCRR 200.5[j][5]; see also "Requirements Related to Special Education Impartial Hearings," at pp. 3-5, Office of Special Educ. [Sept. 2017], available at http://www.p12.nysed.gov/specialed/publications/2017-memos/documents/requirements-impartial-hearings-september-2017.pdf). Allegations of such practice are not clearly stated in the current matter and, even if they were, for the reasons stated in the body of this decision, the alleged delay in transmittal of the IHO decision would still not amount to good cause for the parents' late service of the request for review. Nevertheless, the district is warned that such practice could, if the circumstances warranted, support a finding that the district denied a student a FAPE.

[9] State regulation requires that any party "who intends to seek review by [an SRO] of the decision of an [IHO] shall personally serve upon the opposing party, . . . , a notice of intention to seek review" in the form described therein (8 NYCRR 279.2[a]). The notice of intention to seek review must be personally served upon the opposing party no later than 25 days after the date of the decision of the impartial hearing officer sought to be reviewed (see 8 NYCRR 279.2[b]). Among other things, [t]he service of a notice of intention to seek review upon a school district serves the purpose of facilitating the timely filing of the hearing record by the district with the Office of State Review (see Application of a Student with a Disability, Appeal No. 16-040; Application of a Student Suspected of Having a Disability, Appeal No. 12-014; Application of a Student with a Disability, Appeal No. 11-162; Application of a Student with a Disability, Appeal No. 10-038). The district must file the completed and certified record with the Office of State Review within 10 days after service of the notice of intention to seek review (see 8 NYCRR 279.9[b]). In the instant matter, the parents had until January 25, 2021 to timely serve the notice of intention to seek review on the district; however, the hearing record indicates and the parents admit that the notice of intention to seek review was untimely served on the district on January 29, 2021 (see Jan. 29, 2021 Parent Aff. of Serv). Although the notice of intention to seek review was untimely, the district was provided the opportunity to file the hearing record—which the Office of State Review received in a timely manner on February 8, 2021—accordingly, no harm resulted from the late service of the parents' notice of intention to seek review (see 8 NYCRR 279.2[a]; 279.9[a]). As there was no prejudice to the district—and the district does not even assert prejudice—resulting from the untimely served notice of intention to seek review, this is not a basis for dismissing the parents' request for review (see Application of a Student with a Disability, Appeal No. 16-040; Application of a Student with a Disability, Appeal No. 15-096).

this information to justify the late service of their notice of intention to seek review and not the late service of their request for review.[10, 11]

Because the parents failed to properly initiate this appeal by effectuating timely service upon the district, and there is no good cause asserted in the request for review, in an exercise of my discretion, the appeal is dismissed (8 NYCRR 279.13; see New York City Dep't of Educ. v. S.H., 2014 WL 572583, at *5-*7 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late]; B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-67 [S.D.N.Y. 2013]; T.W., 891 F. Supp. 2d at 440-41; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *4-*5 [Sept. 25, 2009] [upholding dismissal of a petition served three days late]; Keramaty v. Arlington Cent. Sch. Dist., 05-CV-0006, at *39-*41 [S.D.N.Y. Jan. 25, 2006] [upholding dismissal of a petition served one day late], adopted [S.D.N.Y. Feb. 28, 2006]; Application of a Student with a Disability, Appeal No. 18-046 [dismissing request for review for being served one day late]).

VI. Conclusion

Having found that the request for review must be dismissed because the parents failed to timely initiate the appeal, the necessary inquiry is at an end.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 26, 2021

SARAH L. HARRINGTON
STATE REVIEW OFFICER

[10] The notice of intention to seek review is a filing separate and apart from the "Notice of Request for Review" (compare 8 NYCRR 279.2, with 8 NYCRR 279.3). The parents acknowledge their understanding of this in their reply, as the parents clarify that the statement in the request for review regarding late service was solely relevant to the notice of intention to seek review and not to the request for review (Reply ¶ 2).

[11] Moreover, documentation submitted with the parents' reply reflects that the student's mother was hospitalized on February 11, 2021, after the deadline for service of the request for review had passed.