The University of the State of New York

The State Education Department
State Review Officer
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No. 21-196

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

Appearances:
Liz Vladeck, General Counsel, attorneys for petitioner, by Mitchell L. Pashkin, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from the decision of an impartial hearing officer (IHO) which ordered the district to reimburse respondents (the parents) for the costs of the student's tuition at Cherokee Creek Boys School (Cherokee Creek) and York Preparatory School (York Prep) for the 2018-19 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

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

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

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). 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

Due to the procedural posture of this appeal and the lack of information contained within the limited hearing record, the student's educational history will not be recited in detail. Briefly, because the student was not making progress in a public school setting, he attended a special class in a nonpublic school with additional support of a private 1:1 reading program (Parent Exs. C at p. 1; T at ¶¶ 29-30; W at ¶¶ 4-7). The student subsequently transferred to York Prep for the 2017-18 (seventh grade) school year (Parent Exs. C at p. 1; W at ¶ 8). While at York Prep, the student exhibited significant anxiety at school and with stressors at home (Parent Exs. W at p. 2).

A neuropsychological update of the student was conducted on March 10 and March 11, 2018 (Parent Ex. C at p. 1). The neuropsychologist first evaluated the student in 2012 and had

been following up with him since that time (Parent Ex. T ¶ 18). According to the evaluation report, it was recommended, among other things, that "[d]ue to significant emotional and behavioral regression, for the remainder of the academic year through the summer, [the student] require[d] a full-time therapeutic academic placement as part of a 12 month educational plan to meet his range of needs" (Parent Ex. C at p. 8).

Based on recommendations by the neuropsychologist who conducted the March 2018 neuropsychological update and the parents' educational consultant, the parents placed the student at Cherokee Creek, an out-of-State therapeutic boarding school, in April 2018 (Parent Ex. W at ¶¶ 9-10; see Parent Ex. T ¶¶ 31-34).[1] The student continued at Cherokee Creek through the end of the 2017-18 school year and for the July and August portion of the 2018-19 school year, as recommended by the neuropsychologist (Parent Ex. W at ¶ 12; see Parent Ex. T at ¶ 41). The student was discharged from Cherokee Creek in August 2018 (Parent Ex. O).

On August 19, 2018, the parents executed an enrollment contract for the student's attendance at York Prep for the 2018-19 (eighth grade) school year (Parent Ex. I).[2]

On August 20, 2018, the parents sent the district a notice indicating that the student's last developed IEP was not appropriate for a variety of reasons, including that the program could not "provide the level of support and individualization to enable [the student] to benefit from education" (Parent Ex. B at p. 2).[3] The parents indicated that, until the district recommended an appropriate placement, they intended to enroll the student at a nonpublic school for the 2018-19 school year and seek district funding for the costs thereof (id.).[4]

As of September 2018, based on recommendations by the neuropsychologist, the student's psychiatrist, and the student's team at Cherokee Creek, the student transferred to York Prep (Parent

[1] Cherokee Creek has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[2] York Prep has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[3] The parents also disagreed with the district's purported failure to develop an IEP for the student for the 2018-19 school year (Parent Ex. B at p. 1).

[4] The parents identified Academics West as the unilateral placement in their August 2018 letter (Parent Ex. B at p. 2). However, there is no other mention of Academics West in the hearing record and the reference to this school in the August 2018 letter appears to be a typographical error. In addition, in several places, the affidavits offered by the parents as direct testimony of their witnesses in lieu of in-hearing testimony include what appear to be typographical errors relating to dates, which makes identifying the precise timeline of events somewhat difficult to ascertain (see, e.g., Parent Exs. T at ¶¶ 5, 51 [indicating that the student re-enrolled at Cherokee Creek in December 2019 instead of 2018]; U at ¶ 31 [indicating that the student began attending Cherokee Creek in April 2017 instead of 2018]; W at ¶ 12 [indicating that the student began attending Cherokee Creek in March 2018 instead of April]). Ultimately, the errors are not determinative of any issue on appeal. However, the parents' attorneys are cautioned to pay greater attention to details of the documents they prepare on their clients' behalf in future matters.

Ex. W at ¶¶ 15; see Parent Ex. T at ¶¶ 40, 43). The student attended York Prep from September 6, 2018 through December 21, 2018 (Parent Exs. J; R).

A neuropsychological addendum was conducted in November 2018 (Parent Ex. S).

Due to the student's reaction to a traumatic event in the family, the neuropsychologist and psychiatrist thought it was necessary for the student to return to Cherokee Creek (Parent Ex. W at ¶¶ 27-28; see Parent Ex. T at ¶¶ 50-51).[5] The parents signed an enrollment contract with Cherokee Creek on December 21, 2018, and the student began attending Cherokee Creek on December 27, 2018 (Parent Exs. G; H; U at ¶ 31; W at ¶ 30).[6] The student attended Cherokee Creek for the remainder of the 2018-19 school year and was discharged from Cherokee Creek in August 2019 (see Parent Exs. G; M).

A. Due Process Complaint Notice

By due process complaint notice dated May 19, 2020, the parents asserted that the district failed to offer the student a FAPE for the 2018-19 school year (see Parent Ex. A). The parents raised the same challenges to the CSE process and recommended program as were raised in the parents' August 2018 notice to the district (compare Parent Ex. A at pp. 1-2, with Parent Ex. B at pp. 1-2). For relief, the parents requested reimbursement for the cost of the parents' unilateral placement of the student at Cherokee Creek for the entirety of the 2018-19 school year (Parent Ex. A at p. 2).

The parents submitted an amended due process complaint notice dated October 26, 2020, which included the same assertions as to a denial of FAPE for the 2018-19 school year as were alleged in the May 2020 due process complaint notice and the August 2018 notice to the district (compare Parent Ex. L at pp. 1-2, with Parent Exs. A at pp. 1-2; B at pp. 1-2). However, as relief, the parents requested reimbursement for the cost of the student's attendance at York Prep from September 6, 2018 through December 21, 2018 and the student's attendance at Cherokee Creek from July 1, 2018 through August 15, 2018 and from December 27, 2018 through June 30, 2019 (Parent Ex. L at p. 2).

B. Impartial Hearing Officer Decision

The parties convened for an impartial hearing on November 5, 2020, at which point the representative for the district noted that settlement of this matter had been discussed and did not seem possible and she further noted that the district opposed the amended due process complaint notice, stating the district's position that it was filed after the expiration of the statute of limitations (Tr. pp. 3-4, 5). The attorney for the parents responded asserting that "an amendment relates back

[5] It is unclear from the hearing record as to when this event occurred. The August 2019 discharge summary from Cherokee Creek indicates that the incident occurred in winter 2018; however, the incident was mentioned in the March 2018 neuropsychological update and in the August 2018 Cherokee Creek discharge summary (compare Parent Exs. M at p. 3, with Parent Exs. C at pp. 1, 2; O at p. 3).

[6] The student's report card for the 2018-19 school year at Cherokee Creek indicates that the student enrolled at Cherokee Creek on December 27, 2018 (Parent Ex. G).

to the proceeding when it's out of the same conduct, transaction, or occurrence that was in the original pleading, which is the case here" (Tr. p. 6).

At the next hearing date, December 1, 2020, the attorney for the district objected to the amended due process complaint notice on statute of limitations grounds, arguing that the parents should have known the student did not have an IEP for the 2018-19 school year by August 1, 2018 (Tr. pp. 11-12). Counsel for the district clarified that the district did not object to the initial May 2018 due process complaint notice but objected to the October 2020 amended due process complaint notice because it sought additional relief and was outside of the statute of limitations period (Tr. p. 12). Counsel for the parents responded, asserting that the additional relief requested in the amended due process complaint notice related back to the same allegations of a denial of FAPE that were included in the initial due process complain notice (Tr. p. 13). Counsel for the parents further noted that "the parties have been in discussions for several years now regarding this claim and the District was well aware of the parent's –. . . request . . . for both schools" (Tr. p. 14).

At the next hearing date, December 11, 2020, the parties discussed the submission of briefs on the district's motion to dismiss the parents' amended due process complaint notice and the scheduling of a hearing on the merits of the parents' claims (Tr. pp. 19-24). Counsel for the district acknowledged that the district was not presenting a case and the hearing would be limited to the parents' witnesses (Tr. p. 23).

The parents submitted a written response to the district's motion to dismiss dated December 4, 2020 focused on the application of the relation back doctrine to the parents' amended due process complaint notice (Dec. 4, 2020 Parent Statement). The district submitted a written motion to dismiss dated December 16, 2020 requesting that the parents' claim for reimbursement for York Prep be dismissed as outside the statute of limitations; however, the district did not respond to the parents' argument asserting that the relation back doctrine should be applied (Dec. 16, 2020 Dist. Mot. to Dismiss). Rather, in its motion to dismiss, the district addressed the two enumerated exceptions to the statute of limitations and also asserted that, because the State adopted the federal limitations period, executive orders issued during the Covid-19 pandemic cannot toll the statute of limitations (id.).

The IHO addressed the district's statute of limitations argument in an interim decision dated December 17, 2020, in which the IHO agreed with the parents' position that the relation back doctrine permitted the parents' amended due process complaint notice to go forward (Interim IHO Decision at p. 3). The IHO reviewed the relation back doctrine as set forth in CPLR 203(f); specifically, the IHO noted that the original pleading must give notice of the transactions or occurrences to be proved (id.). The IHO then found that the original due process complaint notice put the district on notice of the transactions at issue; the IHO determined that, because the parents sought reimbursement for the cost of tuition for the same denial of FAPE for the 2018-19 school year in both complaints, "[n]othing ha[d] changed and there [we]re no additional facts or allegations being proposed" (id.).

The hearing resumed on February 11, 2021 and concluded on July 19, 2021 after six days of proceedings (Tr. pp. 25-112).[7] In a decision dated August 21, 2021, the IHO determined that because the district did not present any testimony or evidence, the district failed to meet its burden of proving that it offered the student a FAPE for the 2018-19 school year (IHO Decision at pp. 4-5). The IHO then found that the parents presented "extensive affidavit testimony and submitted substantial documentary evidence" to show that both York Prep and Cherokee Creek were appropriate unilateral placements for the student (id. at pp. 6-7). The IHO further found that equitable considerations supported the parents' request for tuition reimbursement for the 2018-19 school year (id. at p. 7). The IHO awarded the parents the cost of the student's attendance at Cherokee Creek from July 1, 2018 through August 17, 2018 and from December 28, 2018 through the end of the 2018-19 school year and the cost of the student's attendance at York Prep from September 6, 2018 through December 20, 2018 (id. at p. 8).

IV. Appeal for State-Level Review

The district appeals from the IHO's decision denying the district's motion to dismiss the parents' amended due process complaint notice, and, thus, requests that the IHO's award of tuition reimbursement for the parents' placement of the student at York Prep be overturned. The district notes that the IHO did not "squarely address" whether the statute of limitations had expired prior to the filing of the amended due process complaint notice and asserts that the parents did not oppose the district's contention that the limitations period had expired. Next, the district asserts that the IHO erred in finding the relation back doctrine permitted the amended due process complaint notice to go forward. The district contends that federal law governs the calculation of the statute of limitations and that the IHO erred in applying a State law to the statute of limitations analysis. Further, the district asserts that "a common law doctrine such as the non-codified relation back doctrine does not toll the IDEA's statute of limitations" and that "the two enumerated statutory exceptions set forth in the IDEA to the expiration of the statute of limitations are the only grounds for excusing the expiration of the statute of limitations." Finally, the district contends that, even applying the standard for the relation back doctrine used by the IHO, the amended due process complaint notice included a different set of facts in that the initial due process complaint notice asserted the student attended Cherokee Creek for the entirety of the 2018-19 school year and the amended due process complaint notice included a different set of facts with the student allegedly attending Cherokee Creek for part of the 2018-19 school year and York Prep for the remaining part of the year.

[7] The district did not appear for the hearings held on February 11, 2021 and March 22, 2021 (Tr. pp. 25-41). Testimony of the parents' witnesses was presented by affidavit during the May 12, 2021 hearing and the parents had the witnesses available for cross-examination (Tr. pp. 50-51; Parent Exs. T-W). Cross-examination of one of the parents' witnesses was completed during the hearing (Tr. pp. 55-102). Counsel for the district expressed her intention to cross-examine two of the parents' other witnesses (Tr. pp. 102-04); however, the witnesses were not reachable on the June 22, 2019 hearing date, and on the final hearing date, July 19, 2021, the district had a new attorney, who indicated he had no questions for the parents' witnesses (Tr. pp. 103-04, 108). The parties submitted post-hearing briefs dated August 20, 2021.

V. Applicable Standards

Two purposes of the IDEA (20 U.S.C. §§ 1400-1482) are (1) to ensure that students with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and (2) to ensure that the rights of students with disabilities and parents of such students are protected (20 U.S.C. § 1400[d][1][A]-[B]; see generally Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 239 [2009]; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-07 [1982]).

A FAPE is offered to a student when (a) the board of education complies with the procedural requirements set forth in the IDEA, and (b) the IEP developed by its CSE through the IDEA's procedures is reasonably calculated to enable the student to receive educational benefits (Rowley, 458 U.S. at 206-07; T.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 151, 160 [2d Cir. 2014]; R.E. v. New York City Dep't of Educ., 694 F.3d 167, 189-90 [2d Cir. 2012]; M.H. v. New York City Dep't of Educ., 685 F.3d 217, 245 [2d Cir. 2012]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "'[A]dequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP'" (Walczak v. Fla. Union Free Sch. Dist., 142 F.3d 119, 129 [2d Cir. 1998], quoting Rowley, 458 U.S. at 206; see T.P. v. Mamaroneck Union Free Sch. Dist., 554 F.3d 247, 253 [2d Cir. 2009]). The Supreme Court has indicated that "[t]he IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement" (Endrew F. v. Douglas Cty. Sch. Dist. RE-1, 580 U.S. __, 137 S. Ct. 988, 999 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural inadequacies (a) impeded the student's right to a FAPE, (b) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or (c) caused a deprivation of educational benefits (20 U.S.C. § 1415[f][3][E][ii]; 34 CFR 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]; Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 [2007]; R.E., 694 F.3d at 190; M.H., 685 F.3d at 245).

The IDEA directs that, in general, an IHO's decision must be made on substantive grounds based on a determination of whether the student received a FAPE (20 U.S.C. § 1415[f][3][E][i]). A school district offers a FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction" (Rowley, 458 U.S. at 203). However, the "IDEA does not itself articulate any specific level of educational benefits that must be provided through an IEP" (Walczak, 142 F.3d at 130; see Rowley, 458 U.S. at 189). "The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created" (Endrew F., 137 S. Ct. at 1001). The statute ensures an "appropriate" education, "not one that provides everything that might be thought desirable by loving parents" (Walczak, 142 F.3d at 132, quoting Tucker v. Bay Shore Union Free Sch. Dist., 873 F.2d 563, 567 [2d Cir. 1989] [citations

omitted]; see Grim, 346 F.3d at 379). Additionally, school districts are not required to "maximize" the potential of students with disabilities (Rowley, 458 U.S. at 189, 199; Grim, 346 F.3d at 379; Walczak, 142 F.3d at 132). Nonetheless, a school district must provide "an IEP that is 'likely to produce progress, not regression,' and . . . affords the student with an opportunity greater than mere 'trivial advancement'" (Cerra, 427 F.3d at 195, quoting Walczak, 142 F.3d at 130 [citations omitted]; see T.P., 554 F.3d at 254; P. v. Newington Bd. of Educ., 546 F.3d 111, 118-19 [2d Cir. 2008]). The IEP must be "reasonably calculated to provide some 'meaningful' benefit" (Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114, 1120 [2d Cir. 1997]; see Endrew F., 137 S. Ct. at 1001 [holding that the IDEA "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"]; Rowley, 458 U.S. at 192). The student's recommended program must also be provided in the least restrictive environment (LRE) (20 U.S.C. § 1412[a][5][A]; 34 CFR 300.114[a][2][i], 300.116[a][2]; 8 NYCRR 200.1[cc], 200.6[a][1]; see Newington, 546 F.3d at 114; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 108 [2d Cir. 2007]; Walczak, 142 F.3d at 132).

An appropriate educational program begins with an IEP that includes a statement of the student's present levels of academic achievement and functional performance (see 34 CFR 300.320[a][1]; 8 NYCRR 200.4[d][2][i]), establishes annual goals designed to meet the student's needs resulting from the student's disability and enable him or her to make progress in the general education curriculum (see 34 CFR 300.320[a][2][i], [2][i][A]; 8 NYCRR 200.4[d][2][iii]), and provides for the use of appropriate special education services (see 34 CFR 300.320[a][4]; 8 NYCRR 200.4[d][2][v]).[8]

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]; R.E., 694 F.3d at 184-85; T.P., 554 F.3d at 252). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; see Gagliardo, 489 F.3d at 111; Cerra, 427 F.3d at 192). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 CFR 300.148).The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

[8] The Supreme Court has stated that even if it is unreasonable to expect a student to attend a regular education setting and achieve on grade level, the educational program set forth in the student's IEP "must be appropriately ambitious in light of his [or her] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives" (Endrew F., 137 S. Ct. at 1000).

VI. Discussion

A. Scope of Review

Initially, in its request for review, the district does not challenge the IHO's determination that the district denied the student a FAPE for the 2018-19 school year or that York Prep and Cherokee Creek were appropriate unilateral placements for the student for the 2018-19 school year. As such, those determinations have become final and binding on the parties and will not be further discussed (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; 8 NYCRR 279.8[b][4]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]). The appeal in this matter is limited to whether the IHO erred in finding that the district's statute of limitations defense did not apply to bar the parents' request for tuition reimbursement for York Prep set forth in the amended due process complaint notice.

B. Statute of Limitations

The district asserts that the parents' amended due process complaint notice was filed outside of the applicable statute of limitations period and that the IHO's finding that the amended due process complaint notice related back to the initial filing was in error.[9]

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

[9] Even if I were to find in the district's favor on appeal, executive orders issued during the Covid-19 pandemic tolled the statute of limitations during the period between the filing of the initial due process complaint notice and the amended due process complaint notice (see Executive Order [A. Cuomo] 202.8, 202.14 202.28, 202.38, 202.48, 202.55, 202.55.1, 202.60, 202.67, 202.72 [9 NYCRR 8.202.8, 8.202.14, 8.202.28, 8.202.38, 8.202.48, 8.202.55, 8.202.55.1, 8.202.60, 8.202.67, 8.202.72]). While the district argued in its written motion to dismiss that the executive orders should not apply to the statute of limitations because the State adopted the federal limitations period, the district has not provided any authority adopting this position and prior State level review decisions have applied the tolling aspects of the executive orders to the statute of limitations (see, e.g., Application of the Dep't of Educ., Appeal No. 21-135).

due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.51-1[f]; 8 NYCRR 200.5[j][1][i]).

Additionally, an amended complaint may relate back to an earlier complaint under the relation back doctrine in order for "a plaintiff to correct a pleading error—by adding either a new claim or a new party—after the statutory limitations period has expired" (Buran v. Coupal, 661 N.E.2d 978, 981 [N.Y. 1995]). The relevant consideration is whether the original complaint gave the defendant notice of the transactions or occurrences at issue (O'Halloran v. Metro. Transp. Auth., 60 N.Y.S. 3d 128, 131–32 [1st Dept. 2017]).

Initially, the district's argument that the amended due process complaint notice included a different set of facts from the initial due process complain notice is without merit. As noted by the IHO, the parents' amended due process complaint notice asserted the same grounds for a denial of a FAPE as were addressed in the initial due process complaint notice, changing only the relief requested to add a request for reimbursement of the cost of tuition at York Prep (Interim IHO Decision at p. 3; see Parent Exs. A; L).[10] Under these circumstances, while an amendment of the due process complaint notice was an appropriate action, the claim against which the district is raising the statute of limitations as a defense is the allegation of a denial of FAPE, not the relief that is connected to the cause of action (see L.K. v. Sewanhaka C. High Sch. Dist., 2015 WL 12964663, at *11 [E.D.N.Y. July 16, 2015] [in determining when a cause of action accrues, "the proper focus is on the time of the discriminatory act, not the point at which the consequences of the act become painful"], aff'd, 641 Fed. Appx. 56 [2d Cir. 2016]). In this instance, the allegation of a denial of FAPE was not changed in the amended due process complaint notice (Parent Exs. A; L).

Finally, the core of the district's argument on appeal is that the IHO erred in applying the relation back doctrine. According to the district, the relation back doctrine is akin to common law equitable tolling and is not one of the two enumerated exceptions to the IDEA statute of limitations. At least one circuit court has held that the inclusion of the two statutory exceptions precludes application of common law equitable tolling principles to save claims otherwise foreclosed by the IDEA statute of limitations (D.K. v. Abington Sch. Dist., 696 F.3d 233, 248 [3d Cir. 2012]). However, the relation back doctrine does not appear to be a method for applying tolling of the statute of limitations, but is rather a means for identifying when a claim was filed (see, e.g., Seaboard Air Line Ry. v. Renn, 241 U.S. 290, 293 [1916] ["[i]f the amendment merely expanded or amplified what was alleged in support of the cause of action already asserted, it related back to the commencement of the action, and was not affected by the intervening lapse of time"]).

[10] Although an amendment to a due process complaint notice may not be necessary in all situations where the requested relief is changed, an amendment to the due process complaint notice appears to have been the proper course of action in this instance as the parents were or should have been aware of their request for tuition reimbursement at York Prep as of the time of filing the due process complaint notice. Generally, with respect to relief (versus alleged violations), State and federal regulations require the due process complaint notice to state a "proposed resolution of the problem to the extent known and available to the party at the time" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][7][A][ii]; 34 CFR 300.508[b]).

Accordingly, the IHO's application of this longstanding principle to the district's defense of statute of limitations was reasonable and will not be disturbed.[11]

VII. Conclusion

As set forth above, the IHO's determinations regarding the district's statute of limitations defense were reasonable and will not be disturbed. I have considered the parties' remaining contentions and find that I need not address them in light of my determinations herein.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
October 29, 2021

SARAH L. HARRINGTON
STATE REVIEW OFFICER

[11] New York codified the relation back doctrine in CPLR 203[f], which provides that "[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading." However, the relation back doctrine has a longstanding history in some form prior to codification (see e.g., Harriss v. Tams, 179 N.E. 476, 481 [NY 1932] [discussing when a cause of action raised in an amended complaint relates back to the initial complaint]).