The University of the State of New York

The State Education Department
State Review Officer
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No. 22-043

Application of a STUDENT WITH A DISABILITY, by his parent, 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:
Law Office of Noelle Boostani, attorneys for petitioner, by Noelle Boostani, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Gail M. Eckstein, Esq. and Brian J. Reimels, 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 parent) appeals from a decision of an impartial hearing officer (IHO) which determined that the parent's claims were barred by the IDEA's statute of limitations and dismissed her due process complaint notice. 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

The parties' familiarity with the detailed facts and procedural history of the case is presumed and will not be recited in detail. Briefly, the student was first evaluated in the first grade and attended school with the support of integrated co-teaching (ICT) services in a district public school from second grade through eighth grade (Dist. Ex. 5 at p. 2; Tr. pp. 88). After receiving a "promotion in doubt letter" during the student's 2016-17 school year (eighth grade), the parent obtained a private neuropsychological evaluation of the student on January 23, 2017 to determine if the student had "an underlying learning disability, [to] provide diagnostic clarity, and [to] evaluate the need for additional educational supports and accommodations" (Dist. Ex. 5 at p. 1).

In an email to the CSE dated May 8, 2017, the parent requested deferral to the district's Central Based Support Team (CBST) for placement of the student at the Churchill School

(Churchill) for the 2017-18 school year (ninth grade) (Parent Ex. I at p. 1).[1] The parent consented to a reevaluation of the student on May 15, 2017, and the district conducted a social history update on May 25, 2017, obtained a teacher report completed on May 31, 2017, and conducted a classroom observation on June 1, 2017 (Dist. Exs. 4; 6; 7).

On June 2, 2017, a CSE convened to review the private neuropsychological evaluation and district evaluations and to develop an IEP with an implementation date of June 9, 2017 (Dist. Ex. 8 at pp. 1, 18). Finding that the student was eligible for special education as a student with a learning disability, the June 2017 CSE recommended that the student receive ICT services in math, English language arts (ELA), social studies, and science (id. at p. 13).[2] Additionally, the CSE recommended two 40-minute sessions of group occupational therapy (OT) per month (id.). Thereafter, the parent unilaterally placed the student at Churchill where he attended ninth grade for the 2017-18 school year (see Parent Ex. K).

On May 30, 2018, the CSE convened to conduct the student's annual review and formulate an IEP for the student with an implementation date of June 18, 2018 (Parent Ex. E at pp. 1, 13). Finding that the student remained eligible for special education as a student with a learning disability, the May 2018 CSE recommended placement in a 12:1+1 special class in a State-approved nonpublic school (NPS) (id. at p. 9). The CSE also recommended one 40-minute session of group counseling services per week and one 40-minute session of group speech-language therapy per week (id.). Subsequently, the student attended Churchill for the 2018-19, 2019-20, and 2020-21 school years (Tr. pp. 95-96).

In an email dated May 27, 2020 to the district school psychologist,[3] the parent expressed that after the student was approved to attend Churchill during the last month of his freshman year (2017-18 school year), it was explained to her in an "evaluation meeting" that payment would be made retroactive to the first day the student attended Churchill (Dist. Ex. 11 at pp. 3-4).[4] The parent further explained that there was a new financial officer at Churchill that did not know her family and was then billing the parent for all of the student's freshman year at Churchill (id. at p. 4). In further correspondence dated May 28, 2020, the district school psychologist informed the parent that she wished that she could help but that she had nothing to do with cases that were "settled" and that the parent should contact whoever "settled the case" (id. at pp. 2-3). The parent indicated that the district school psychologist was the only contact on the case and was the one

[1] Churchill has been approved by the Commissioner of Education as a school with which districts may contract for the instruction of students with disabilities (see 8 NYCRR 200.1[d], 200.7).

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

[3] The district school psychologist served in the role of district representative during the May 2018 CSE meeting (Parent Ex. E at p. 14; see Tr. p. 65).[4] The May 2020 email exchange was placed into evidence as both a parent and district exhibit (Parent Ex. D; Dist. Ex. 11); however, the district exhibit contains a more complete copy of the correspondence and accordingly will be cited herein.

[4] The May 2020 email exchange was placed into evidence as both a parent and district exhibit (Parent Ex. D; Dist. Ex. 11); however, the district exhibit contains a more complete copy of the correspondence and accordingly will be cited herein.

who "granted" the student's funding (id. at p. 2). The parent reiterated that at the "meeting" the district school psychologist indicated that funding was to be retroactive to the start of the school year—however, funding started from the day of the meeting (id.). The district school psychologist responded by email on May 30, 2020, and indicated that the CSE recommended a program for the student and that it "does not ever approve funding" (id. at p. 1). She further explained that it is the role of the CBST to find a school for the student and approve funding; she agreed with the parent that there was a misunderstanding (id.).

A. Due Process Complaint Notice

In a due process complaint notice dated November 17, 2020, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2017-18 school year, that the parent's placement of the student at Churchill was appropriate, and that equitable considerations favored awarding the parent the full cost of the student's tuition at Churchill (see Parent Ex. A at p. 2). The parent raised a number of challenges to the process surrounding the development of the student's June 2017 IEP, including the parent's participation, the substantive recommendations made in the June 2017 IEP, and also alleged that the district applied illegal policies to the student which were discriminatory in nature (id. at pp. 5-8). The parent also asserted that she disagreed with the district's most recent evaluation of the student, she contacted the district multiple times-as early as September 2016—to express her disagreement, the district never advised her of her right to an independent educational evaluation (IEE), and she obtained a neuropsychological evaluation of the student in December 2016 and provided the report from the evaluation to the district for review after it was completed (id. at p. 4).

The parent next alleged that following the June 2017 CSE meeting, the district did not advise her of her due process rights and that the district failed to provide her with prior written notice of its recommendation or a school location letter (Parent Ex. A at p. 7). Additionally, the parent asserted that at the June 2017 CSE meeting, the district school psychologist "specifically advised the Parent that the deferral would cover all of the Churchill placement fees associated with the 2017-2018 school year" (id. at p. 8). The parent argued that the parent's claims should be tolled to November 2020 because the district failed to apprise her of her due process rights and the district's "expressions" led the parent to believe that the district intended on funding the student's 2017-18 school year at Churchill and the parent reasonably relied on these statements (id. at p. 9). In addition, the parent argued that her Section 504 claims were timely because they were subject to a three-year statute of limitations (id. at p. 2).

Next, the parent contended that Churchill was an appropriate unilateral placement because it provided the student with specialized services that met the student's needs and enabled the student to make progress during the 2017-18 school year (id. at p. 8). The parent also contended that equitable considerations weighed in her favor because she made the student available for assessments, provided the district with information regarding the student's needs, attended the CSE meeting, and provided the district with proper notice of her intent to place the student at Churchill (id. at p. 9).

As relief, the parent requested: a declaration that the district violated the IDEA and section 504 by failing to offer the student a FAPE for the 2017-18 school year and by discriminating against him on the basis of his disability; a declaration that Churchill was an appropriate placement

for the student; a declaration that equities favored the parent; an order for direct funding or reimbursement of the student's Churchill tuition and related costs for the 2017-18 school year; and an order reimbursing the parent for the costs of the private 2017 neuropsychological evaluation (Parent Ex. A at p. 9).

B. Events Post Dating the Due Process Complaint Notice—Impartial Hearing Officer Decision

On November 30, 2020, the district filed a motion to dismiss the parent's due process complaint notice arguing that the IDEA's two-year statute of limitations barred the parent's claims related to the 2017-18 school year (Dist. Mot. To Dismiss). The district asserted that the parent "knew or should have known" of any deficiencies with the June 2017 IEP at the June 2017 CSE meeting (id. at p. 3). The district further asserted that the latest date the parent could have filed a due process complaint notice related to the June 2017 IEP would have been June 2, 2019 (id.). Therefore, the district asserted that the parent's due process complaint notice filed on November 18, 2020 was time-barred by the statute of limitations and should be dismissed (id.). In a response to the district's motion to dismiss dated August 17, 2021, the parent argued that her claims related to the 2017-18 school year were either tolled or did not accrue before May 28, 2020 (Parent Ex. B at p. 1). More specifically, the parent argued that the "primary justification" for the delay in filing a due process complaint notice was that she relied on statements made by the district staff at the May 2018 CSE meeting indicating the district would retroactively fund the student's placement at Churchill for the 2017-18 school year (id.). The parent also argued that the district did not apprise her of her due process rights and she was not aware of those rights until she retained an attorney for special education matters in November 2020 (id. at p. 2). Lastly, the parent alleged that her Section 504 claims were timely because of the three-year statute of limitations for Section 504 claims (id.).

An impartial hearing commenced on January 5, 2022 and concluded on February 15, 2022, after three days of proceedings, specifically to address the district's motion to dismiss (Tr. pp. 34-139).[5] In a decision dated March 9, 2022, the IHO granted the district's motion to dismiss the matter, finding that the parent's due process complaint notice filed on November 18, 2020 related to the 2017-18 school year and was barred by the IDEA two-year statute of limitations (IHO Decision at 3-11).[6] More specifically, the IHO found that the parent "knew or should have known" of deficiencies with the student's June 2017 IEP at the time of the June 2017 CSE meeting (id. at p. 4).[7] The IHO noted that the latest that the parent could have filed a due process complaint notice raising any claims related to the 2017-18 school year would have been June 2, 2019 (id. at pp. 4-5). With respect to the two exceptions to the IDEA's two-year statute of limitations, the IHO found that neither exception applied (id. at pp. 5-9). With respect to the specific misrepresentation

[5] The parties met for prehearing conferences on August 24, October 27, and December 3, 2021 for scheduling purposes (Tr. pp. 1-10, 27-33). The hearing record reflects an unexplained skip in consecutive pagination from the October 27, 2021 hearing date (Tr. pp. 8-10) to the December 3, 2021 hearing date (Tr. pp. 27-33).

[6] The IHO decision is not paginated; for the purposes of this decision, the pages will be cited consecutively from the first page of the decision (see IHO Decision at pp. 1-18).

[7] The IHO did not address the parent's request for reimbursement for the cost of the January 2017 neuropsychological evaluation as an IEE (see IHO Decision).

exception, the IHO found that the parent's due process complaint notice did not indicate that "but-for" specific representations from the district, the parent would have filed a due process complaint notice at an earlier date when the claims arising under the 2017-18 school year would have been timely (id. at pp. 5-6). With regard to the withholding of information exception, the IHO found that the parent was apprised of her due process rights during an initial social history evaluation and social history update, which were both prior to the June 2017 CSE meeting (id. at p. 8). The IHO also noted that the SESIS events log indicated that a prior written notice was generated and sent to the parent on June 13, 2017 for the June 3, 2017 CSE meeting and on June 8, 2018 for the May 30, 2018 CSE meeting (id. at p. 9). Lastly, the IHO found that the district's motion to dismiss was an appropriate mechanism by which to seek dismissal of the parent's due process complaint notice based on the statute of limitations and that it is not restricted by any prerequisites relating to sufficiency challenges in the due process complaint notice (id. at pp. 9-10). The IHO also noted that it was appropriate for her to make a determination on the district's motion to dismiss prior to the commencement of any substantive due process hearings (id. at p. 10). The IHO then dismissed the parent's due process complaint notice (id. at p. 12).

IV. Appeal for State-Level Review

The parent appeals, arguing that the IHO erred by granting the district's motion to dismiss the due process complaint notice based on it not being timely filed under the IDEA's two-year statute of limitations. Initially, the parent raises a number of allegations related to the conduct of the hearing. Related to the parent's assertion that the district had a policy of allowing retroactive tuition reimbursement to Churchill, the parent argues that the IHO improperly excluded evidence presented by the parent, impeded the development of the hearing record by declining to sign subpoenas requested by the parent, and improperly decided not to allow testimony by the Churchill director of admissions. The parent submits additional evidence on appeal directed at this issue consisting of two exhibits the IHO excluded during the hearing, a signed and a proposed subpoena, written objections to the conduct of the hearing, and the district's response to the parent's subpoenas. The parent further asserts that during the hearing, the IHO allowed the district to change its arguments from those included in the motion to dismiss, specifically noting that the district only argued at the hearing that the district school psychologist did not make the alleged misrepresentation. Additionally, the parent asserts that the IHO improperly relied on the evidence as attached to the district's motion to dismiss rather than as entered into evidence during the hearing. According to the parent, the IHO placed a heightened burden on the parent to prove reliance on the district's alleged misrepresentation. In addition, the parent asserted that the IHO 's conduct of the proceeding evinced a partiality to the district because the IHO repeatedly interfered and prevented the parent from presenting her case. Further, the parent argues that the IHO erred in finding that she had no jurisdiction over 504 claims and requested that the undersigned make a determination on Section 504 claims.[8]

[8] An SRO's jurisdiction is limited by State law to matters arising under the IDEA and Article 89 of the Education Law (Educ. Law § 4404[2] [providing that SROs review IHO determinations "relating to the determination of the nature of a child's handicapping condition, selection of an appropriate special education program or service and the failure to provide such program"]). Courts have also recognized that the Education Law makes no provision for State-level administrative review of IHO decisions with regard to section 504 (see A.M. v. New York City Dep't of Educ., 840 F. Supp. 2d 660, 672 & n.17 [E.D.N.Y. 2012] [noting that "[u]nder New York State education

Turning to the substance of the parent's arguments related to the IHO's statute of limitations findings, the parent appeals from the IHO's finding that neither of the IDEA's tolling exceptions apply to this matter. The parent asserts that the weight of the evidence shows that the parent relied on a misrepresentation made by the district school psychologist at the June 2018 CSE meeting indicating the district would pay for the student's tuition at Churchill for the 2017-18 school year. The parent further contends that the IHO erred in finding that the district's evidence satisfied its burden of proving that the parent was notified of her due process rights.

The district argues to uphold the IHO's decision, dismissing the parent's due process complaint notice because the claims relating to the 2017-18 school year were barred by the IDEA's two-year statute of limitations.

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

law, the SRO's jurisdiction is limited to matters arising under the IDEA or its state counterpart"], aff'd, 513 Fed. App'x 95 [2d Cir. May 12, 2013]; see also F.C. v. New York City Dep't of Educ., 2016 WL 8716232, at *11 [S.D.N.Y. Aug. 5, 2016]). Therefore, I do not have jurisdiction to review any portion of the parent's claims regarding violations of section 504 and they will not be further discussed.

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]).[9]

[9] 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).

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).

VI. Discussion

A. Preliminary Matters

1. Additional Evidence

The parent submits additional evidence on appeal consisting of two exhibits the IHO excluded during the hearing, a signed and a proposed subpoena the IHO declined to sign, the parent's written objections to the conduct of the hearing, and the district's response to the parent's subpoenas (Req. for Rev. Exs. A-E). The district does not object to the additional evidence; however, the district asserts that the IHO acted properly in excluding two of the parent's exhibits.

Generally, documentary evidence not presented at an impartial hearing may be considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; see also 8 NYCRR 279.10[b]; L.K. v. Ne. Sch. Dist., 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]).

The parent asserts that the two exhibits the IHO excluded during the hearing should be admitted because they are "circumstantially relevant" to the parent's claim that the district school psychologist advised her that the May 2018 CSE's decision to defer the student's placement to the CBST would be retroactive to the first day the student attended Churchill (Req. for Rev. ¶2). According to the parent, the additional evidence shows that for two other students whose CSE meetings took place during the school year, and included the same district school psychologist as was present for the student's June 2018 CSE meeting, Churchill was funded retroactively by the district for the entire school year (id.; see Req. for Rev. Exs. A; B). Review of the hearing record shows that the parent attempted to submit these documents into evidence; the district objected asserting that the documents did not pertain to the school year at issue and that they were redacted and did not "contain the full scope of the document"; and the IHO sustained the district's objection (Tr. pp. 77-80). Counsel for the parent responded to the IHO's ruling stating that the documents were redacted to preserve the confidentiality of the other students and that, regardless of the year,

the documents are "evidence of a practice" (Tr. pp. 80-81). The IHO addressed the parent's argument reasserting that the redactions made the documents unreliable and finding that IEPs for other students were irrelevant to the issues presented in this matter (Tr. pp. 81-82). The IHO advised counsel for the parent to "Ask about this student, and this practice, and what happened in this case" (Tr. p. 83). On appeal, the parent asserts that the submitted evidence shows that for other students, the district has funded Churchill from the start of a school year where the students' CSE meeting took place during the school year. However, the issue presented in this proceeding, and on appeal, is not whether the district has provided funding retroactively at Churchill for other students under a set of circumstances not fully revealed by the documents the parent seeks to have considered. Rather, as discussed below, the issue, as it relates to the exception to the statute of limitations, is whether the district made a specific misrepresentation to this parent that it had resolved the problem forming the basis of the parent's complaint. The parent asserts that the district school psychologist made such a misrepresentation during the June 2018 CSE meeting. While the parent's submitted additional evidence may be relevant to demonstrate that the district has on other occasions engaged in a practice that superficially appears to correspond to the practice the parent claims the district agreed to apply in her case, it is not relevant as to whether a specific misrepresentation was or was not made to her by a district representative at the June 2018 CSE meeting.[10] Accordingly, the IHO did not err in excluding this evidence from the hearing record and it will not be considered on appeal.

The parent also submits a signed and a proposed subpoena, the parent's written objections to the conduct of the hearing, and the district's response to the subpoenas, indicating that they should be admitted as part of the hearing record as they were submitted to the IHO (Req. for Rev.Exs. C-E; see Req. for Rev. ¶1). Pursuant to State regulation, the hearing record includes "all briefs, arguments or written requests for an order filed by the parties for consideration by the impartial hearing officer" as well as "any subpoenas issued by the impartial hearing officer in the case" (8 NYCRR 200.5 [j][5][vi][b], [d]). Accordingly, as an argument can be made that the proposed exhibits should have been included as part of the hearing record, they will be accepted solely for the purpose of ensuring the completeness of the hearing record on appeal.[11]

[10] The parent also appeals from the IHO's determination that the redactions in the additional evidence prevented the IHO from knowing what they were (Req. for Rev. ¶2; see Tr. p. 80). According to the parent, "[a] plain review of the exhibits indicates that names were redacted, not broad scopes of content"; however, review of the documents shows that the parent's description of the documents is not altogether accurate as large portions of the documents were redacted (Req. for Rev. ¶2; see Req. for Rev. Exs. A; B). Additionally, the documents are not clear as to when the other students started attending Churchill or why both documents show payments were made to Churchill prior to the dates of the other students' CSE meetings (see Req. for Rev. Exs. A; B). Nevertheless, it is possible that some of the information missing from the documents could have been filled in by the parent's proposed witness who was not permitted to testify because her proposed testimony was found to be irrelevant (Tr. pp. 120-21). Accordingly, the documents are excluded due to relevance as discussed above, and no determination is made regarding their accuracy.

[11] The proposed and signed subpoena were in fact included as part of the hearing record submitted on appeal along with an additional proposed subpoena. The additional proposed subpoena was also included as a Parent Exhibit during the hearing (see Parent Ex. C).

2. IHO Bias and Conduct of Hearing

The parent alleges that the IHO's conduct of the proceeding evinced a partiality for the district and that the IHO deprived the parent of the opportunity to present her case because the IHO prevented the parent from developing the hearing record.

It is well settled that an IHO must be fair and impartial and must avoid even the appearance of impropriety or prejudice (see, e.g., Application of a Student with a Disability, Appeal No. 12-066). Moreover, an IHO, like a judge, must be patient, dignified, and courteous in dealings with litigants and others with whom the IHO interacts in an official capacity and must perform all duties without bias or prejudice against or in favor of any person, according each party the right to be heard, and shall not, by words or conduct, manifest bias or prejudice (e.g., Application of a Student with a Disability, Appeal No. 12-064). An IHO may not be an employee of the district that is involved in the education or care of the child, may not have any personal or professional interest that conflicts with the IHO's objectivity, must be knowledgeable of the provisions of the IDEA and State and federal regulations and the legal interpretations of the IDEA and its implementing regulations, and must possess the knowledge and ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice (20 U.S.C. § 1415[f][3][A]; 34 CFR 300.511[c][1]; 8 NYCRR 200.1[x]).

Generally, unless specifically prohibited by regulation, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, in how they conduct an impartial hearing, so long as they "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46,704 [Aug. 14, 2006] [indicating that IHOs should be granted discretion to conduct hearings in accordance with standard legal practice, so long as they do not interfere with a party's right to a timely due process hearing]). At the same time, the IHO is expected to ensure that the impartial hearing operates as an effective method for resolving disputes between the parents and district (id.). State and federal regulations balance the interests of having a complete hearing record with the parties having sufficient opportunity to prepare their respective cases and review evidence.

An IHO must provide all parties with an opportunity to present evidence and testimony, including the opportunity to confront and cross-examine witnesses (34 CFR 300.512[a][2]; 8 NYCRR 200.5[j][3][xii]). While an IHO is required to exclude evidence and may limit the testimony of witnesses that he or she "determines to be irrelevant, immaterial, unreliable or unduly repetitious" (8 NYCRR 200.5[j][3][xii][c]-[e]), it is also an IHO's responsibility to ensure that there is an adequate and complete hearing record (see 8 NYCRR 200.5[j][3][vii]). Further, State regulation provides that nothing shall impair or limit the IHO in his or her ability to ask questions of counsel or witnesses for the purpose of clarifying or completing the hearing record (8 NYCRR 200.5[j][3][vii]). Moreover, it was well within the IHO's discretion to attempt to control the hearing by excluding evidence or testimony that the IHO finds to be irrelevant, immaterial, or unduly repetitious and by limiting the witnesses who testify to avoid unduly repetitious testimony (see 8 NYCRR 200.5[j][3][xii][c]-[e]).

On review, the hearing record does not support a finding that the IHO demonstrated bias or prevented the parent from being heard or sufficiently developing the hearing record as to the

determinative issue. The hearing record suggests that the IHO generally exhibited patience in conducting the hearing and interacting with the parties. For example, during the impartial hearing, counsel for the district asserted an objection while the parent's attorney was questioning her witness (Tr. pp. 93-94). The IHO responded, "I'm going to give [the parent] a little leeway, because it's a parent witness who probably doesn't have much experience with testifying, so I'm going to allow the question to be re-asked…" (Tr. p. 94).

Turning to the parent's argument that the IHO denied testimony from the parent's witness, a review of the impartial hearing reveals that the IHO explained the reason why she denied testimony from the parent's witness. Initially, the parent wanted the director of Churchill to testify regarding the student's placement process and her understanding of how tuition would be reimbursed (Tr. p. 121). However, similar to the IHO's findings regarding the parent's submitted exhibits as discussed above, the IHO explained that the testimony of the director of Churchill was not relevant as to the statute of limitations or the tolling exceptions (Tr. pp. 121-122). Accordingly, the IHO was within her discretion to exclude testimony from the director of Churchill as the impartial hearing was limited to deciding the district's motion to dismiss.

The parent asserts that the IHO erred by not authorizing the parent's subpoena against the district (Req. for Rev. ¶3; see Parent Ex. C). More specifically, the parent contends that although the district produced the requested "SESIS Events Log," the log was redacted after June 8, 2018 and the district did not respond to a request for the "SESIS Documents Log" (Req. for Rev. ¶3; see Tr. pp. 109-17; Parent Ex. C; Dist. Ex. 11).[12] It appears that the parent sought these documents to show that the district did not send out a procedural safeguards notice to the parent (Req. for Rev. ¶3). However, as the IHO determined during the hearing, the district bore the burden of going forward with evidence to support its position that the parent received the notice, as such, it was not unreasonable to deny the subpoena request at that stage of the hearing (see Tr. p. 113).

Additionally, the parent's disagreement with the conclusions reached by the IHO does not provide a basis for finding actual or apparent bias by the IHO (see Chen v. Chen Qualified Settlement Fund, 552 F.3d 218, 227 [2d Cir. 2009] [finding that "[g]enerally, claims of judicial bias must be based on extrajudicial matters, and adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality"]; see also Liteky v. United States, 510 U.S. 540, 555 [1994]; Application of a Student with a Disability, Appeal No. 13-083). Overall, contrary to the parent's allegations, a review of the hearing record demonstrates that the parent had the opportunity to present evidence and arguments in support of her requests for relief and that the IHO conducted the impartial hearing in a manner consistent with the requirements of due process see Educ. Law § 4404[2]; 34 CFR 300.514[b][2][i], [ii]; 8 NYCRR 200.5[j]). Accordingly, the evidence in the hearing record does not support a finding that the IHO exhibited bias against the parent or prevented her from developing the hearing record.

[12] The parties indicated that a discussion took place during the October 27, 2021 prehearing conference regarding the subpoenas; however, it appears that the parties referenced pages that are missing from the transcript on appeal, as noted above (see Tr. pp. 110-11).

B. Statute of Limitations

The parent argues that the IHO erred in dismissing her due process complaint notice as raising claims that are barred by the statute of limitations and asserts that her claims were tolled and exceptions to the timeline to request an impartial hearing apply. The district contends that the IHO correctly dismissed the parent's due process complaint notice because the parent failed to file it within two years of the date she "knew or should have known" of the alleged action that formed the basis of her complaint and that neither of the statutory exceptions apply to the facts of this matter.

The IDEA requires that, unless a state establishes a different limitations period under state law, a party must request a due process hearing within two years of when the party knew or should have known of the alleged action that forms the basis of the complaint (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 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114 n.8 [2d Cir. 2008] [noting that the Second Circuit applied the same "knows or has reason to know" standard of IDEA claim accrual both prior to and after codification of the standard by Congress]; M.D. v. Southington Bd. of Educ., 334 F.3d 217, 221-22 [2d Cir. 2003]; G.W. v. Rye City Sch. Dist., 2013 WL 1286154, at *17 [S.D.N.Y. Mar. 29, 2013], aff'd, 554 Fed. App'x 56, 57 [2d Cir Feb. 11, 2014]; R.B. v. Dept. of Educ., 2011 WL 4375694, at *2, *4 [S.D.N.Y. Sept. 16, 2011]; Piazza v. Florida Union Free Sch. Dist., 777 F. Supp. 2d 669, 687-88 [S.D.N.Y. 2011]). New York State has affirmatively adopted the two-year period found in the IDEA (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j][1][i]). Determining when a parent knew or should have known of an alleged action "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]).

Exceptions to the timeline to request an impartial hearing apply if a parent was 1) prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice; or 2) the district withheld information from the parent that it was required to provide (20 U.S.C. § 1415[f][3][D]; Educ. Law 4404[1][a]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i] R.B., 2011 WL 4375694, at *6).

In the instant case, the hearing record shows that the parent filed the due process complaint notice on November 17, 2020 (Parent Ex. A). Therefore, without satisfying either exception to the two-year statute of limitations, those claims which accrued before November 17, 2018 are barred by the statute of limitations. The parent's claim that the district failed to offer the student a FAPE for the 2017-18 school year is based on allegations regarding the June 2017 CSE meeting (see Parent Ex. A at pp. 5-7). Consistent with the IHO's determination, the parent "knew or should have known" of deficiencies with the student's June 2017 IEP at the time of the June 2017 CSE meeting. Generally, claims related to the conduct of a CSE meeting or the contents of an IEP accrue at the time of the CSE meeting or, at the latest, upon the parent's receipt of the IEP (see F.L. v. Bd. of Educ. of Great Neck Union Free Sch. Dist., 274 F. Supp. 3d 94, 113-14 [E.D.N.Y. 2017], aff'd, 2018 WL 4049074 [2d Cir. Aug. 24, 2018]; Bd. of Educ. of North Rockland Cent. Sch. Dist. v. C.M., 2017 WL 2656253, at *7-*9 [S.D.N.Y. June 20, 2017], aff'd, 2018 WL 3650185 [2d Cir. Aug. 1, 2018]). Additionally, on appeal, the parent does not challenge the IHO's finding

as to when her claims accrued.[13] Accordingly, the parent's claims raised in the due process complaint notice are outside of the two-year statute of limitations unless one of the exceptions to the statute of limitations applies.

1. Specific Misrepresentations

The parent argues on appeal that the IHO erred in imposing a heightened pleading requirement on the parent's misrepresentation claim, asserting that she explicitly pled that she relied on the district school psychologist's misrepresentation made at the May 2018 CSE meeting, believing that her disagreement with the June 2017 CSE had been resolved. In addition, the parent asserts that the IHO did not make a finding as to the weight of the evidence regarding the asserted misrepresentation and that the district failed to meet its burden of proving that the district did not make the alleged misrepresentation. The district argues to uphold the IHO's finding that the "specific misrepresentations" exception does not apply in this matter.

The "specific misrepresentations" exception to the timeline to request an impartial hearing applies "if the parent was prevented from requesting the hearing due to . . . specific misrepresentations by the [district] that it had resolved the problem forming the basis of the complaint" (20 U.S.C. § 1415[f][3][D]; Educ. Law 4404[1][a]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]; Bd. of Educ. of N. Rockland Cent. Sch. Dist. v. C.M., 2018 WL 3650185, at *3 [2d Cir. 2018][noting that the district's refusal to accede to the parents requests formed the basis of the complaint and that the district did not misrepresent that it had resolved the problem]; R.B. v. Dept. of Educ. of City of New York, 2011 WL 4375694, at *4, *6 [S.D.N.Y. Sept. 16, 2011]; see D.K. v. Abington Sch. Dist., 696 F.3d 233, 245-46 [3d Cir. 2012]; Sch. Dist. of Philadelphia v. Deborah A., 2009 WL 778321, at *4 [E.D. Pa. Mar. 24, 2009], aff'd 422 Fed. App'x 76 [3d Cir. Apr. 6, 2011]; Coleman v. Pottstown Sch. Dist., 983 F. Supp. 2d 543, 569 [E.D. Pa. 2013] [holding that negligent misrepresentations will not trigger application of the exception]; Evan H. v. Unionville-Chadds Ford Sch. Dist., 2008 WL 4791634, at *6 [E.D. Pa. Nov. 4, 2008]; C.H. v. Northwest Ind. Sch. Dist., 815 F. Supp. 2d 997, 985 [E.D. Tex. 2011] [identifying that the parent, with the benefits of hindsight, "might consider the district's assessment of the [student] to be wrong, but that does not rise to a specific misrepresentation triggering" the exception, and that if "inadequate assessments were sufficient to warrant application of the statutory exception, the exception would swallow the rule"]; see also Application of a Student with a Disability, Appeal No. 13-215).

In this case, the parent testified that during the May 2018 CSE meeting, during which the CSE recommended that the student attend an NPS for the student's 2018-19 school year, she was informed by the district school psychologist that payment for Churchill would be retroactive to the

[13] State regulations governing the practice before the Office of State Review requires that the parties set forth in their pleadings "a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately," and further specify that "any issue not identified in a party's request for review, answer, or answer with cross-appeal shall be deemed abandoned and will not be addressed by a State Review Officer" (8 NYCRR 279.8[c][2], [4]; see 8 NYCRR 279.4[a]). The due process complaint notice also included allegations related to a request for IEE's; that claim would not have accrued at the same time as the parent's claims related to the June 2017 CSE meeting (see Parent Ex. A). However, the IHO dismissed the parent's due process complaint notice without referencing the request for IEEs (see IHO Decision) and the parent has not appealed from the IHO's failure to address her request for IEEs (see Req. for Rev.). Accordingly, at this stage in the proceeding, the request for IEEs has also been abandoned.

first day the student attended Churchill, which the parent interpreted as a representation that the district intended to fund the entirety of the student's attendance at Churchill during the 2017-18 school year (Tr. p. 92). The parent further testified that two years later, in May 2020, she was informed by Churchill that the student's 2017-18 school year was not funded by the district (Tr. pp. 92-93). The parent contends that she relied on the "misrepresentation" made by the district school psychologist that the student's tuition would be retroactively funded for the student's entire 2017-18 school year and only discovered it was not funded in May 2020, at which time she attempted to contact the district school psychologist (Tr. pp. 93-94; Dist. Ex. 11).

Contrary to the parent's testimony, the district school psychologist testified that, specifically related to the student's 2017-18 school year, during the May 2018 CSE meeting, the parent was informed that funding would begin on the date the CSE meeting took place, namely May 30, 2018 (Tr. pp. 57-58). The district school psychologist also testified that the parent was informed that the CSE itself was not responsible for funding (Tr. p. 58). The district school psychologist further testified that she did not inform the parent that tuition would be retroactive to encompass the entirety of the student's 2017-18 school year (Tr. p. 63). Additionally, the district school psychologist testified that she explained the process to the parent that the CSE recommends a program but does not approve funding (Tr. pp. 62-63).

Review of the May 2020 email correspondence between the parent and the district school psychologist does not provide any additional clarity (see Dist. Ex. 11). It appears from the email correspondence that the parent believed the school psychologist told her during the May 2018 CSE meeting that the student's tuition would be paid for "retroactive to his first day at Churchill"; however, the district school psychologist repeatedly informed the parent that she would have to make an inquiry with whoever "settled the case," finally explaining that the CSE "does not ever approve funding" and that the CBST "finds a school . . . and approves funding" (Dist. Ex. 11 at pp. 1, 2, 3-4).

In review of the submitted email correspondence and the presented testimony, it appears whatever communication occurred during the May 2018 CSE meeting was more likely the result of a misunderstanding on the part of the parent or an inartful explanation by the district, rather than an express agreement made by a CSE member that the district would fund the student's placement retroactively—something the district school psychologist repeatedly testified was not part of the role of the CSE (Tr. pp. 54, 57-58, 61-63, 75, 83). Given the parent's unilateral placement of the student at Churchill in September 2017 and the CSE's recommendation of the student's placement of Churchill at the May 2018 CSE meeting, there is a reasonable basis in the record to conclude that the parent and district had different notions of what constituted the student's first official day at Churchill for district funding purposes. Moreover, the emails between the parent and the district demonstrate that to some extent the parties appeared to be "talking past each other," with the parent insisting that retroactive funding for Churchill had been approved by the district for the 2017-18 school year while the district school psychologist asserted that to the extent there had been some sort of settlement of the parent's underlying claims for the 2017-18 school year resulting in an agreement to fund the student's attendance at Churchill, the parent would have to contact whoever "had settled" the issue because the CSE did not have funding authority. Accordingly, the weight of the evidence in the hearing record leans more toward a finding that the district school psychologist did not make a misrepresentation that the district agreed to fund the student's

placement retroactively for the 2017-18 school year and, accordingly, I will not disturb the IHO's determination that the specific misrepresentations exception does not apply in this matter.

2. Withholding of Information

The parent claims that the district withheld information that it was required to provide under the IDEA. Specifically, the parent contends that the district failed to apprise her of her due process rights and did not provide her with a copy of the "Procedural Safeguards Notice" for the 2017-18 school year. The district argues that the parent knew of her due process rights prior to the June 2017 CSE meeting and that the evidence in the hearing record indicates that the parent was also advised of her rights at the May 2018 CSE meeting.

The "withholding of information" exception to the timeline to request an impartial hearing applies "if the parent was prevented from filing a due process complaint notice due to . . . the [district's] withholding of information from the parent that was required . . . to be provided to the parent (20 U.S.C. § 1415[f][3][D]; Educ. Law 4404[1][a]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]). Case law interpreting the "withholding of information" exception to the limitations period has found that the exception almost always applies to the requirement that parents be provided with the written notice of procedural safeguards required under the IDEA (Bd. of Educ. of N. Rockland Cent. School Dist. v. C.M., 744 Fed Appx 7, 11 [2d Cir. Aug. 1, 2018]; R.B., 2011 WL 4375694, at *4, *6; see D.K. v. Abington Sch. Dist., 696 F.3d 233, 246 [3d Cir. 2012]; C.H. v. Northwest Ind. Sch. Dist., 815 F. Supp. 2d 997, 986 [E.D. Tex. 2011]; Tindell v. Evansville-Vanderburgh Sch. Corp., 805 F. Supp. 2d 630, 644-45 [S.D. Ind. 2011]; El Paso Indep. Sch. Dist. v. Richard R., 567 F. Supp. 2d 918, 943-45 [W.D. Tex. 2008]; Evan H. v. Unionville-Chadds Ford Sch. Dist., 2008 WL 4791634, at *7 [E.D. Pa. Nov. 4, 2008]). Such safeguards include the requirement to provide parents with prior written notices and procedural safeguards notices containing, among other things, information about requesting an impartial hearing (see 20 U.S.C. § 1415[b][3]; [d]; 34 CFR 300.503; 300.504; 8 NYCRR 200.5[a], [f]). Under the IDEA and federal and State regulations, a district must provide parents with a copy of a procedural safeguards notice annually (20 U.S.C. § 1415[d][1][A]; 34 CFR 300.504[a]; 8 NYCRR 200.5[f][3]). However, if a parent is otherwise aware of his or her procedural due process rights, the district's failure to provide the procedural safeguards notice will not necessarily prevent the parent from requesting an impartial hearing (see D.K., 696 F.3d at 246-47; R.B., 2011 WL 4375694, at *7; Richard R., 567 F. Supp. 2d at 944-45).

In the instant case, a social history evaluation dated December 6, 2010, indicates that due process rights were explained to the parent, that the parent understood, and a procedural safeguard notice was provided to the parent (Dist. Mot. To Dismiss Ex. 4 at p. 7).[14] Further, the hearing record includes a social history update dated June 25, 2017, which indicates that the due process rights were "re-discussed" with the parent and that the parent was given a procedural safeguard

[14] Although the parent argues that the December 2010 social history evaluation was not entered into evidence, the exhibit was attached to the district's motion to dismiss, which was brought prior to the start of the hearing (Dist. Mot. To Dismiss Ex. 4). Therefore, the parent had an adequate opportunity to respond to the December 2010 social history evaluation and present an argument as to the exhibit during the hearing on the district's motion, and, accordingly, the exhibit constitutes a part of the hearing record and it was permissible for the IHO, as well as myself, to consider it in addressing the merits of the district's motion.

notice (Dist. Ex. 4 at p. 3). Although the parent testified during the impartial hearing that she did not receive a procedural safeguard notice as stated in the social history update, the hearing record contains a prior written notice dated June 13, 2017 for the June 2017 CSE meeting, which included instructions for obtaining a copy of the procedural safeguards notice as well as contact information for assistance with understanding the special education process (Tr. pp. 89-90; Dist. Ex. 10 at pp. 2-3). Therefore, the hearing record shows that, even if the parent did not receive a procedural safeguards notice for the student's 2017-18 school year, the district had previously advised the parent of her due process rights (see R.B., 2011 WL 4375694, at *7; Richard R., 567 F. Supp. 2d at 944-45). In addition, the district school psychologist testified that she explained to the parent, during the May 2018 CSE meeting, that "if she's not in agreement with the IEP that's created or with the placement that is recommended, that she can exercise her due process rights, and those are explained in the procedural safeguards packet" (Tr. pp. 69-70). She further testified that she mailed the procedural safeguards notice related to the May 30, 2018 CSE meeting to the parent on June 8, 2018 which is also indicated in the Special Education Student Information System (SESIS) events log (Tr. pp. 65-67; Dist. Ex. 11 at p. 3). Based on the foregoing, there is not a sufficient basis to disturb the IHO's determination that the withholding of information exception does not apply to the parent's claims related to the student's 2017-18 school year and therefore, the parent's claims are barred by the IDEA's two-year statute of limitations.

VII. Conclusion

Having determined that the parent's due process complaint notice was not filed within two years of the accrual of the parent's claims related to the June 2017 IEP and that neither of the exceptions to the statute of limitations apply, I find that the parent's allegations are barred by the statute of limitations and there is no reason to disturb the IHO's decision. I have considered the parties' remaining contentions and find that I need not address them in light of my decision herein.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
June 24, 2022

CAROL H. HAUGE
STATE REVIEW OFFICER