



The University of the State of New York

The State Education Department

State Review Officer

www.sro.nysed.gov

No. 24-367

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

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 dismissed his due process complaint notice against respondent (the district) with prejudice.¹ 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]).

¹ The student's father appears pro se, having filed the due process complaint notice and request for review as an individual (see Req. for Rev. at pp. 1, 2, 6). On the first day of the impartial hearing, both parents appeared jointly and pro se, however, the student's father appeared individually for the remaining impartial hearing dates (Tr. pp. 1, 2-3, 26, 27, 43, 47-48). For the purpose of consistency, this decision refers to petitioner as the parent.

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

At the time of the impartial hearing, the student was 22 years old (Parent Exs. B at p. 1; C at p. 1; D; E; F at p. 1; Dist. Exs. 1 at p. 1; 2 at pp. 1, 2; 3 at p. 1; 4 at p. 1; 7 at p. 1; 9 at p. 1; 14 at p. 1; 15 at p. 1).² The hearing record reflects that the district agreed to provide the student with services recommended in a May 18, 2023 IEP through June 2024 (when the student turned 22), pursuant to a resolution agreement settling the parent's claims related to the 2023-24 school year

² The hearing record contains multiple duplicative exhibits. For purposes of this decision, only parent exhibits are cited in instances where both a parent and district exhibit are identical in content. The IHO is reminded that it is her responsibility to exclude evidence that she determines to be irrelevant, immaterial, unreliable, or unduly repetitious (8 NYCRR 200.5[j][3][xii][c]).

(IHO Ex. I at pp. 6-7).³ A CSE convened on April 12, 2024 to conduct a transition planning meeting and develop an exit summary (Dist. Exs. 12; 14 at pp. 1-3). The April 2024 CSE indicated that the student was expected to exceed age eligibility and exit the district on June 26, 2024 (Dist. Ex. 14 at p. 1).

A. Due Process Complaint Notice

In a due process complaint notice dated May 20, 2024, the parent alleged that the April 2024 CSE did not review any progress reports, medical documentation, or neuropsychological evaluations (Dist. Ex. 15 at p. 3). The parent also asserted that the district failed to discuss "a true transition" for the student (*id.*). The parent requested pendency and for the student to receive services for the 2024-25 school year (*id.*).

B. Impartial Hearing Officer Decision

An impartial hearing convened before an IHO appointed by the Office of Administrative Trials and Hearings (OATH) on July 1, 2024 (Tr. pp. 1-25). On July 3, 2024, the district filed a motion to dismiss with exhibits (IHO Ex. I). The parties reconvened on July 10, 2024, and the IHO reserved her decision on the district's motion to dismiss (Tr. pp. 26-42; *see* Tr. p. 33). The impartial hearing concluded on July 30, 2024 (Tr. pp. 43-104). In a decision dated August 2, 2024, the IHO granted the district's motion to dismiss the parent's due process complaint notice (IHO Decision at pp. 8, 9). The IHO determined that she lacked jurisdiction to consider the parent's claims because the student was 22 years old (*id.* at p. 8). The IHO found that the parent did not allege a gross violation of the IDEA in his due process complaint notice and had only asserted that the district failed to provide appropriate transition services during the 2023-24 school year (*id.*). The IHO further found that she lacked jurisdiction to enforce a resolution agreement related to the 2023-24 school year (*id.*). The IHO also determined that the student was not entitled to pendency for the 2024-25 school year (*id.* at p. 9).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in finding that she lacked jurisdiction over the parent's claims and asserts that the student "did not have a true transition to adult services from the district" (Req. for Rev. at p. 3). As relief, the parent requests extended eligibility for the student through the 2024-25 school year.

The district did not interpose an answer.

V. Discussion - Initiation of the Appeal

As a threshold matter, it must be determined whether or not the parent's appeal should be dismissed for lack of personal service of the request for review.

State regulation requires that any party "who intends to seek review by [an SRO] of the decision of an [IHO] shall personally serve upon the opposing party, . . . , a notice of intention to

³ The hearing record does not include a May 2023 IEP.

seek review" in the form described therein (8 NYCRR 279.2[a]).⁴ In addition, an appeal from an IHO's decision to an SRO—whether the appeal is by a district or a parent—must be initiated by timely personal service of a verified request for review and other supporting documents, if any, upon respondent (8 NYCRR 279.4[b], [c]). Personal service on a school district is made "by delivering a copy thereof to the district clerk, to a trustee or member of the board of education of such school district, to the superintendent of schools, or to a person who has been designated by the board of education to accept service" (8 NYCRR 279.4[b]). The petitioner must personally serve the opposing party with the notice of intention to seek review no later than 25 days after the date of the IHO's decision and with the request for review no later than 40 days after the date of the IHO's decision (8 NYCRR 279.2[b]). Thereafter, "the notice of intention to seek review, notice of request for review, request for review, and proof of service [must be filed] with the Office of State Review . . . within two days after service of the request for review is complete" (8 NYCRR 279.4[e] [emphasis added]).

Generally, the failure to comply with the practice requirements of Part 279 of the State regulations, including the failure to properly serve an initiating pleading in a timely manner, may result in the rejection of the submitted documents or the dismissal of a request for review by an SRO (8 NYCRR 279.8[a]; 279.13; see B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-66 [S.D.N.Y. Sept. 6, 2013] [upholding an SRO's dismissal of a parent's appeal where, among other procedural deficiencies, the amended petition was not personally served upon the district]; Application of a Student with a Disability, Appeal No. 16-015 [dismissing a parent's appeal for failure to effectuate proper personal service of the petition upon the district where the parent served a district employee not authorized to accept service]; Application of a Child with a Disability, Appeal No. 06-117 [dismissing a parent's appeal for failure to effectuate proper personal service in a timely manner where the parent served a CSE chairperson and, thereafter, served the superintendent but not until after the time permitted by State regulation expired]; see also Application of a Student with a Disability, Appeal No. 12-042 [dismissing parent's appeal for failure to properly effectuate service of the petition in a timely manner where the parent served the district's counsel by overnight mail]; Application of a Student with a Disability, Appeal No. 11-013 [dismissing parent's appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 11-012 [dismissing parents' appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 09-099 [dismissing parents' appeal for failure to timely effectuate personal service of the petition upon the district]; Application of the Dep't of Educ., Appeal No. 05-082 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent's former counsel by overnight mail]; Application of

⁴ The purpose of a notice of intention to seek review is twofold. First, in a case where the school district is the respondent, the service of a notice of intention to seek review facilitates the district's timely filing of the hearing record with the Office of State Review (see Application of a Student with a Disability, Appeal No. 16-040; Application of a Student Suspected of Having a Disability, Appeal No. 12-014; Application of a Student with a Disability, Appeal No. 11-162; Application of a Student with a Disability, Appeal No. 10-038). In addition, whether the respondent is a school district or a parent, the notice of intention to seek review (along with the accompanying case information statement) provides a respondent with advance notice of a petitioner's imminent challenge to an IHO's determination, which may give a respondent additional time to contemplate a position to be stated in an answer—time that is particularly valuable in light of the short time frame allotted for a respondent to answer a request for review or serve a cross-appeal (see 8 NYCRR 279.2[e]; N.Y. State Register Vol. 38, Issue 26, at p. 50 [June 29, 2016]; see also 8 NYCRR 279.4[b]; 279.5[a]).

the Dep't of Educ., Appeal No. 05-060 [dismissing a district's appeal for failing to timely file a hearing record on appeal]; Application of a Child with a Disability, Appeal No. 05-045 [dismissing a parent's appeal for, among other reasons, failure to effectuate proper personal service where the parent served a school psychologist]; Application of the Dep't of Educ., Appeal No. 01-048 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent by facsimile]).

In this matter, the parent failed to initiate the appeal in accordance with the procedures prescribed in State regulations (see 8 NYCRR 279.4[b]). The parent filed the following documents with the Office of State Review: a notice of intention to seek review dated August 21, 2024, a notice of request for review dated August 21, 2024, a request for review dated August 26, 2024, an affidavit of verification notarized on August 26, 2024, and an affidavit of personal service indicating that the request for review was served on the supervisor of CSE 7 on August 26, 2024. The parent's filing did not include proof of service of the notice of intention to seek review as required by State regulation (8 NYCRR 279.4[e]; see 8 NYCRR 279.2[b]; 279.4[b]).⁵

The Office of State Review received the parent's filing on August 30, 2024, but had not yet received a copy of the hearing record. Therefore, by letter to the district dated September 12, 2024, the Office of State Review noted the parent's filing and directed the district to file a copy of the hearing record by September 13, 2024, absent a request for an extension of time. In a letter requesting an extension of time to file the hearing record, the district indicated that it had not been served with the notice of intention to seek review or the request for review and, therefore, had been unaware of the parent's appeal.^{6, 7} The parent did not provide proof of service of the notice of intention to seek review and did not respond to the district's assertions in its letter. The district has not filed an answer to the parent's request for review.

Here, even assuming that the parent had filed proof of service in a timely manner as required by State regulation (see 8 NYCRR 279.4[e]), the parent did not personally serve the district in accordance with State regulation. The supervisor of CSE 7 is not among the individuals listed in State regulation as authorized to accept service (see 8 NYCRR 279.4[b]; see also Appeal of Villanueva, 49 Ed. Dep't Rep. 54, Decision No. 15,956 [personal service upon unidentified receptionist found improper]; Appeal of Baker, 47 Ed. Dep't Rep. 280, Decision No. 15,696 [service upon the executive secretary to the superintendent found improper]). In this instance, given the deficiency in service of the request for review, the appeal must be dismissed.

⁵ The Office of State Review's website includes a section dedicated to assisting pro se parents with drafting, serving, and filing appeals (see "Parent Guide to Appealing the Decision of an Impartial Hearing Officer" available at <https://www.sro.nysed.gov/book/filing-request-review-section-i>). The documents filed by the parent in this matter were prepared on forms made available on the Office of State Review's website (forms A, B, D, E).

⁶ The parent was copied on the district's letter.

⁷ In compliance with the extended timeline, the district filed a copy of the hearing record, which was received by the Office of State Review on September 27, 2024.

VI. Conclusion

In summary, the parent's appeal must be dismissed for the failure to properly initiate the appeal.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
October 28, 2024**

**CAROL H. HAUGE
STATE REVIEW OFFICER**