The University of the State of New York

The State Education Department
State Review Officer
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No. 25-139

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

Appearances:
Law Offices of Lauren A. Baum, P.C., attorneys for petitioner, by Matthew Finizio, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Cynthia Sheps, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which denied her request to be reimbursed for her daughter's tuition at the Knox School for the 2022-23 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]). In addition, when a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law § 3602-c). The task of creating an IESP is assigned to same committee that designs educational programing for students with disabilities under the IDEA (id.). If disputes occur between parents

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

Briefly, the student attended ninth grade at a parochial high school during the 2020-21 school year and passed all of her classes (Dist. Ex. 1 at p.1). At the start of the 2021-22 school year, the student was parentally placed in a private school (Dist. Ex. 1 at p. 1). According to the parent, the student had been previously found eligible for special education as a student with a learning disability (Parent Ex. A at p. 1).[1] According to an IESP, a CSE convened on March 16, 2022 and noted that the student was in tenth grade following a Regents curriculum in a general education setting (Dist. Ex. 1 at p 3). The IESP noted that the student earned third quarter grades in her core courses that ranged between 84 and 100 (Dist. Ex. 1 at pp. 1-2). The parent reported that the student was highly intelligent and functional but severely dyslexic, and the CSE made the following recommendations for the student: five periods per week of group special education teacher support services (SETSS) and two 30-minute sessions per week of individual speech-language therapy (Dist. Ex. 1 at pp. 3, 9-10).[2] The projected implementation date on the student's IESP was March 24, 2022 and the projected date for the next annual review by the CSE was March 16, 2023 (id. at p. 1).

In an email to a district CSE chairperson dated Saturday August 6, 2022, the parent requested a CSE meeting to develop an IEP, briefly noting that the student previously had an IESP (Parent Ex. D). On Wednesday August 12, 2022, the parent electronically signed a "22/23 5-Day Boarding BOOST Enrollment Agreement" with the Knox School (Parent Ex. I). The agreement expressly provided that if it was entered into after June 1, 2022, it was "non-cancellable" (id. at p. 2).

On August 17, 2022, the parent emailed the district stating that the student had an IESP for the 2021-22 school year and asserting that she had previously emailed the district requesting that "an IEP meeting be held" for the student "as the IESP services were not enough to ensure her progress" (Parent Ex. B). The parent stated that she had not yet received a response from the district nor notice of an "IEP meeting" (id.). The parent informed the district that she was enrolling the student in the Knox School and was reserving her right to seek tuition reimbursement if an appropriate IEP and school placement was not received (id.).

In a letter dated November 1, 2022, the attorney for the parent notified the district that the parent had still not received a response to her August communications to the district and had not received an IEP or public school placement for the student for the 2022-23 school year (Parent Ex. C at p. 1). The letter informed the district that the parents remained willing to consider any appropriate program or placement recommended by the CSE for the student for the 2022-23 school year (id.). In the interim, however, the parents "will be sending [the student] to the Knox School for the 2022-23 school year and will be seeking funding/reimbursement for the cost of [her] placement" (id. at pp. 1-2).

[1] 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]).

[2] SETSS is not defined in the State continuum of special education services (see 8 NYCRR 200.6). As has been laid out in prior administrative proceedings, the term is not used anywhere other than within this school district and a static and reliable definition of "SETSS" does not exist within the district.

A. Due Process Complaint Notice

In a due process complaint notice dated July 18, 2024, the student's parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2022-23 school year by failing to develop or provide an appropriate program of services (Parent Ex. A at p. 2).[3] In particular, the parents asserted that in August of 2022 they requested the CSE to hold an IEP meeting for the 2022-23 school year, and later that month notified the CSE that no meeting had been scheduled (id. at p. 2). The parents alleged that the CSE failed to conduct appropriate and necessary assessments, in a timely fashion, and to develop an IEP and recommend an appropriate educational program for the student prior to the start of the 2022-23 school year (id.). As a result, the parents chose to unilaterally place the student at the Knox School (id.). For relief, the parents requested funding/reimbursement of tuition for the Knox School for the 2022-23 school year (id. at p. 3).

The district filed a response to the due process complaint notice dated October 31, 2024, generally denying the allegations set forth in the due process complaint notice and asserting multiple affirmative defenses (Dist. Response to Due Process Compl. Not.).

B. Impartial Hearing Officer Decision

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on December 12, 2024 (Tr. pp. 23-68). In a decision dated January 21, 2025, the IHO dismissed the parents' claims with prejudice (IHO Decision at p. 16). Initially, the IHO concluded that the parent was not a credible witness and therefore the IHO did not give her testimony any weight (id. at p. 14). The IHO noted that while the district did not dispute the parents' contention that it failed to develop an IEP after the parents' request, there was an IESP in place at the start of the 2022-23 school year which the parents had not challenged (id.). While the student was entitled to have the IESP converted to an IEP after the parents' request, by the time the district was obligated to have a public placement in place, the parent had committed to an irrevocable obligation to pay the entire tuition at the Knox School (id.). The IHO observed that that commitment was made only six days after the parents made the request for an IEP and long before the district was obligated to have a program in place (IHO Decision at p. 14). The IHO held that there could be no FAPE violation in this case and that any rule to the contrary would lead to an absurd result, reasoning that any parent "with an IESP could request an IEP the day before the start of the school year and then obligate the district to have a program in place the next day or risk obligation to pay an entire year of private tuition (id.). Accordingly, the IHO concluded that the district did not fail to provide the student a FAPE for the 2022-23 school year and dismissed the parents' claims with prejudice (IHO Decision at pp. 14, 16).

As an independent basis to deny the parents' requested relief, the IHO also concluded that there was no credible evidence that the parents' resided within the district for the 2022-23 school year (IHO Decision at p. 15). According to the IHO, The district argued the issue of residency at the impartial hearing and the parents did not attempt to submit any additional proof to corroborate

[3] While the due process complaint notice was filed on behalf of both "parents," only the student's mother was listed and the appeal from the IHO's decision was brought only by the student's mother, the aforementioned parent.

the parent's testimony, despite the fact that the hearing record remained open for over a month after the hearing (IHO Decision at p. 15; Tr. pp. 48, 54, 65).

For completeness, the IHO also conducted a Burlington/Carter analysis of the appropriateness of the Knox School in the alternative (IHO Decision at p. 15). The IHO concluded that there was no indication in the hearing record that the Knox School individualized the regular classroom instruction to meet the student's needs (id.). As such, the IHO concluded that even if she had found that the district failed to provide the student with a FAPE for the 2022-23 school year, the parents' requested relief would nevertheless have been denied since the parents would not have met their burden in proving the appropriateness of the Knox School (id.).

Again, in alternative findings, the IHO also weighed whether equitable considerations favored granting the parent relief under a Burlington/Carter analysis (IHO Decision at pp. 15-16). The IHO concluded that she would have denied all relief on equitable grounds (id. at p. 15). The IHO reasoned that the parents had financially committed to paying the tuition at the Knox School for the 2022-23 long before the district was obligated to have public programming in place (id.). Further, given the lack of credibility of the parent at the impartial hearing, the IHO could not determine if the parents had fully cooperated with the district in the IEP process (id. at p. 16).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in incorrectly determining that the district was not entitled to provide the student a FAPE for the 2022-23 school year. The parent further asserts that the "Knox School provided an appropriate placement for 2022-23 school year" and that the IHO had erred regarding the balancing of equities (id. at pp. 1-2). Accompanying the request for review was a memorandum of law in support of the request for review (Parent Mem. of Law).

In an answer, the district asserted that the request for review should be dismissed due to the failure to comply with Part 279 of State regulations (Answer at pp. 2-4). In the alternative, the district asserts that the hearing record supported the IHO's dismissal of the parent's claims (id. at pp. 4-9). In a reply, the parent asserted that the request for review sufficiently provided the district with the ability to respond to the parent's allegations and consequently warranted a ruling on the merits (Reply at pp. 1-3).

V. Discussion

At the outset, I note that State regulations governing practice before the Office of State Review provide that a request for review "shall clearly specify the reasons for challenging the [IHO's] decision, identify the findings, conclusions, and orders to which exceptions are taken, or the failure or refusal to make a finding, and shall indicate what relief should be granted by the [SRO] to the petitioner" (8 NYCRR 279.4[a]). Additionally, State regulation provides that a request for review must set forth "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]).[4]

With regard to the parent's request for review, incorporation by reference is specifically prohibited by the practice regulations (8 NYCRR 279.8[b]), and, as a general matter, it has long been held that a memorandum of law is not a substitute for a pleading (8 NYCRR 279.4; 279.6; 279.8[c][3]; [d]; see Davis v. Carranza, 2021 WL 964820, at *11 [S.D.N.Y. Mar. 15, 2021]; see, e.g., Application of the Bd. of Educ, Appeal No. 22-092; Application of a Student with a Disability, Appeal No. 15-070). The practice regulations also require that the request for review contain "citations to the record on appeal, and identification of the relevant page number(s) in the hearing decision, hearing transcript, exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number" (8 NYCRR 279.8[c][3]).

Generally, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or a determination excluding issues from the scope of review on appeal (8 NYCRR 279.8[a]; see Davis, 2021 WL 964820, at *12 [upholding an SRO's conclusions that several claims had been abandoned by the petitioner]; M.C. v. Mamaroneck Union Free Sch. Dist., 2018 WL 4997516, at *23 [S.D.N.Y. Sept. 28, 2018] [upholding dismissal of allegations set forth in an appeal to an SRO for "failure to identify the precise rulings presented for review and [failure] to cite to the pertinent portions of the record on appeal, as required in order to raise an issue" for review on appeal]).

Far from clearly specifying the reasons for challenging the IHO's decision and identifying the findings, conclusions and orders to which exceptions are taken, the request for review consists, in its entirety, of three conclusory sentences which maintain that the IHO incorrectly determined that the district "was not entitled to provide [the student] with a FAPE for the 2022-23 [school year]"; the Knox School provided an appropriate placement for the student (with no allegation that the IHO erred at all); and that the IHO made an incorrect ruling on the equities, as they favored the parent and supported an award of tuition reimbursement. The request for review makes no citation to the evidence in the hearing record at all in violation of 8 NYCRR 279.8 (c)(3) and does not meaningfully engage with any of IHO's reasoning. Furthermore, the request for review submitted to the Office of State Review was not accompanied by a verification executed by the parent as required by 8 NYCRR 279.7(b). For these reasons the parent's request for review is deficient.

Notably, the deficiencies of the request for review cannot remedied by the parent's memorandum of law. Any arguments included solely within the parent's memorandum of law have not been properly raised in the pleading as required and will not be considered or addressed in this decision (8 NYCRR 279.8[c][4]). Thus, when presented with merely conclusory challenges to the IHO's findings in the request for review it is not this SRO's role to research and construct the appealing party's arguments or guess what they may have intended (see, e.g., Gross v. Town of Cicero, 619 F.3d 697, 704 [7th Cir. 2010] [appellate review does not include researching and

[4] See also, M.C. v. Mamaroneck Union Free Sch. Dist., 2018 WL 4997516, at *23 [S.D.N.Y. Sept. 28, 2018] (upholding dismissal of allegations set forth in an appeal to an SRO for "failure to identify the precise rulings presented for review and [failure] to cite to the pertinent portions of the record on appeal, as required in order to raise an issue" for review on appeal).

constructing the parties' arguments]; Fera v. Baldwin Borough, 2009 WL 3634098, at *3 [3rd Cir. Nov. 4, 2009] [a party on appeal should at least identify the factual issues in dispute]; Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 841 [10th Cir. 2005] [generalized assertion of error on appeal is not sufficient]; see generally Taylor v. American Chemistry Council, 576 F.3d 16, 32 n.16 [1st Cir. 2009]; L.I. v. Hawaii, 2011 WL 6002623, at *9 [D. Haw. Nov. 30, 2011]; Lance v. Adams, 2011 WL 1813061, at *2 [E.D. Cal. May 6, 2011] [the tribunal need not guess at the parties' intended claims]; Bill Salter Advertising, Inc. v. City of Brewton, 2007 WL 2409819, at *4 n.3 [S.D. Ala. Aug. 23, 2007]). Thus, any arguments included solely within the memorandum of law have not been properly raised. Furthermore, the unverified memorandum of law is not a proper substitute for a pleading as it would violate the 10-page limit for a request for review as argued by the district (8 NYCRR 279.8[b]).

VI. Conclusion

In summary, the district is correct that the parent's appeal must be dismissed due to the parent's failure to comply with the procedures governing a request for review in Part 279. I have considered the parties' remaining contentions and find it is unnecessary to reach them in light of my determinations above.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
September 30, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER