The University of the State of New York

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

No.25-155

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Dryden Central School District

Appearances:

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which they assert denied their requested relief. 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 student has been the subject of prior State-level appeals (Application of a Student with a Disability, Appeal No. 24-494; Application of a Student with a Disability, Appeal No. 24-495). Accordingly, the parties' familiarity with this proceeding is presumed, and the facts and procedural history of this case will not be recited in detail.

The district filed a due process complaint notice on January 23, 2025 (see Due Proc. Compl. Not. dated Jan. 23, 2025).[1] According to the due process complaint notice, a July 2024 CSE determined the student was eligible for special education services as a student with autism and recommended he attend an 8:1+1 special class at a Board of Cooperative Educational Services (BOCES) program and receive related services of speech-language therapy and individual and

[1] The district had previously filed a due process complaint notice on January 6, 2025 which was withdrawn (see Jan. 24, 2025 Tr. pp. 1-125).

group counseling (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶¶ 4-6).[2] The district's due process complaint notice indicated that the student had emotional regulation challenges including challenges at the BOCES program "for over a year," and that the CSE had expressed concerns regarding the safety of the student and others at the BOCES program and had been searching for a program that met the student's needs, but to no avail (id. ¶ 6). The district reported that its July 2024 CSE reached out to approximately six programs that could offer a smaller student-to-teacher ratio with therapeutic supports, but all of the programs were unavailable, and the parents were not in support of an alternative "homebound instruction" or a full residential placement (id. ¶ 8).

According to the due process complaint notice, the student returned to his BOCES program shortly after the start of the school year and was involved in altercations on September 17, 2024, September 24, 2024 and September 30, 2024 in which he made verbal threats, engaged in violent behaviors and which resulted in suspensions (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶¶ 9-12).[3] For the incident on September 30, 2024, a superintendent's hearing was held on October 16, 2024, in which it was determined that the student's actions violated BOCES's code of conduct, and the student was suspended for one-year (id. ¶ 14; see Dist. Exs. 8; 9). A manifestation determination review (MDR) was also held on October 16, 2024, which determined that neither the student's disability nor the district's failure to follow the student's IEP and behavioral improvement plan (BIP) caused the code of conduct violation (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶ 15). The MDR team also determined that the student would be placed in an interim alternative educational setting (IAES) consisting of three hours of one-on-one tutoring, five days per week at the district office, with speech-language therapy and individual counseling provided once a week, most often virtually (id. ¶ 16).

As recounted in the district's due process complaint notice, the parents filed a due process complaint notice challenging the MDR determination, and on December 10, 2024, an IHO overturned the MDR determination and ordered the student to return to his placement at BOCES (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶ 17). The district alleged that although it did not necessarily disagree with the outcome overturning the manifestation determination, the student was not successful at the BOCES program and his ongoing presence there would likely result in adverse consequences for him and his educational prospects (id. ¶ 18). The district asserted that BOCES, as its own entity, issued a persona non grata letter and sought an injunction to prevent the student's return, which was denied in State court (id. ¶ 19; see Parent Ex. U).

According to the district's due process complaint notice, the parents expressed their desire for the student to be returned to a classroom at the district; however, the district explained that it did not have an 8:1+1 special class in its physical location to provide the student with an

[2] The parent filed 11 documents with their request for review, most of which are duplicative of those already entered into the administrative hearing record. They have been marked as SRO Exhibits 1-11 to distinguish from the copies as filed by the district. Furthermore, I note that the transcripts were not consecutively paginated, thus when the transcript is referred to throughout this decision, for clarity, the date of the hearing on which it was transcribed will be cited to in addition to the page number.

[3] According to the January 23, 2025 due process complaint notice, the district alleged that the student physically attacked four staff members and one student during the less than fifteen days he attended BOCES in person in September 2024 (SRO Ex. 2 ¶ 13).

appropriate education in accordance with his IEP (Due Proc. Compl. Not. dated Jan. 23, 2025¶ 20). The district alleged that since December 11, 2024, it continued to have the IAES available to the student while the parties attempted to discuss an appropriate placement for him (id. ¶ 21). The district further alleged that during this time, it had continuously searched for an appropriate program to enroll the student, as neither the district nor BOCES had the available services in place for him to be successful on a permanent basis (id. ¶ 22). The district claimed that as of January 23, 2025, all applications had been denied due to the lack of programs with openings in the State for students with autism and emotional regulation challenges (id.).

As asserted in its due process complaint notice, the district indicated that it agreed to hold a CSE meeting with the parents on December 20, 2024 (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶¶ 24-25). Over the parents' expressed disagreement, the December 2024 CSE determined that an appropriate placement for the student was one-on-one instruction in the morning followed by related services in the afternoon so that he could be at school for a "full day," while the CSE continued to search for other possible placements (id. ¶¶ 25, 26). According to the district, the parents filed a due process complaint notice on January 6, 2025, challenging the December 2024 CSE's recommendation (id. ¶ 27).[4]

In its due process complaint notice, the district alleged that the December 2024 CSE's recommendation remained the least restrictive and most appropriate placement for the student, considering the availability of programs for students with autism having emotional disorders (Due Proc. Compl. Not. dated Jan. 23, 2025 ¶ 30). Accordingly, as relief, the district requested an expedited impartial hearing and an order placing the student in an IAES during the pendency of the parents' ongoing due process complaint proceedings (id. at p. 9).

On January 24, 2025, the IHO conducted a prehearing conference with the parties which the IHO summarized in an email to the parties (Jan. 24, 2025 Tr. pp. 1-125; see SRO Ex. 7). According to the IHO's summary, eight actions were enumerated as follows: 1) the parents withdrew their due process complaint notice; 2) due to the parents' withdrawal, no pendency order was issued; 3) the parents' insufficiency motion as to the district's due process complaint notice was denied; 4) the impartial hearing on district's due process complaint notice was adjourned to February 21, 2025; 5) the parents indicated that they would not be appearing at the hearing if it was held virtually which the IHO would not agree to given the history of the case; 6) the district would send the Microsoft Teams link for the impartial hearing; 7) the student's mother indicated that she was going to go to federal court; and 8) the student's father was warned on multiple occasions to stop interrupting the IHO during the prehearing conference, he refused to do so even after being muted on multiple occasions, so the IHO removed the father from the prehearing conference , but the father contacted the mother and continued disrupting the prehearing conference through her connection after which the IHO ended the conference (id.). The IHO also noted that he was prepared to issue a pendency order directing BOCES to take the student and also have the student undergo a variety of evaluations including an occupational therapy evaluation, a

[4] In the IHO's decision it was noted that the parents withdrew their due process complaint notice but have since filed additional due process complaint notices which were all pending before the IHO (IHO Decision at p. 32 n.36).

functional behavior assessment (FBA) by a board certified behavior analyst (BCBA), and a neuropsychological evaluation (id.).

On February 6, 2025, the parents filed a motion to dismiss the district's due process complaint notice (see SRO Ex. 5). The parents also alleged that the IHO had ex parte communications with the district and requested that the IHO recuse himself; the IHO denied that he had ex parte communications and denied the parents' request for recusal (see SRO. Ex. 3). On February 11, 2025, the district opposed the parents' motion to dismiss (see SRO Ex. 6).

On February 14, 2025, the IHO informed the parties that the impartial hearing would be held virtually and requested that the parties submit objections to the other parties proposed exhibits by February 19, 2025 (see SRO Exs. 7-8). On the same day, the parents indicated again that they did not consent to a virtual hearing (SRO Ex. 7).

On March 10, 2025, the IHO issued a 39-page decision in which he indicated there were three issues to be resolved: (1) whether the student represented a danger to himself or others during the 2024-2025 school year; (2) whether the student required an IAES; and (3) if the student required an IAES, what IAES was appropriate for the student (IHO Decision at p. 6). After a summarizing both parties' arguments and the submitted evidence, the IHO determined that the district failed to provide the student a FAPE for the 2024-25 school year (id. at pp. 28-39).

First the IHO determined that the district's and BOCES' "open defiance" of a prior IHO order, coupled with their inability or refusal to locate or create an alternative program for the student left him without an education placement, and that while there was testimony that the BOCES staff was trained in escalation strategies, the BOCES staff seemed "utterly incapable" of deescalating this particular student's maladaptive behaviors (IHO Decision at pp. 28-29). Second, the IHO determined that the district failed to comply with statute requiring the district to conduct an FBA or modify the student's existing BIP (id. at p. 29). According to the IHO, the district did not have an FBA done by a behavioral specialist or a BCBA and instead just consisted of the CSE "reviewing documents" (id.). Third, the IHO determined that although the district maintained it was constantly "tweaking" the student's BIP, whatever incentive the district had to modify the BIP was considerably reduced due to the fact that it decided to place the student in a highly restrictive 1:1 environment in an administrative building within the district (id.). The IHO found that the district established and maintained an IAES of its own creation that "more or less sequestered" the student from his peers, and was not approved through an impartial hearing process, in direct violation of the prior IHO order (id. at pp. 29-30). Fourth, the IHO determined that although the student's IEP noted the student's need for socialization and to work on his interpersonal skills, the district was not addressing these needs (id. at p. 30). The IHO noted that the CSE recommended group counseling so that the student could access his peers but BOCES' decision to permanently bar the student from its campus made such services "utterly unachievable" (id.) The IHO found that due to BOCES and the district's inaction, the student was "forced to languish in an intolerable 1:1 setting for months" it would likely take time for the student to reacclimate to a regular classroom setting (id. [emphasis included in original]). Fifth, the IHO determined the district denied the student a FAPE by failing to provide him with the recommended related services and by failing to increase the student's counseling services given the student's "state of crisis" which was compounded by his extended isolation in the 1:1 education setting created by the district (id. at pp. 30-31). Sixth, the IHO determined that even though the student was in a 1:1 educational

placement, he was "more or less free" to do what he wanted and was receiving little to no instruction (id. at p. 31). The IHO also noted that the evidence in the hearing record demonstrated convincingly that the student was likely to have significant regression due to the lack of any educational benefit in his current setting (id.). The IHO concluded his FAPE analysis by stating the district had "utterly failed to offer [the s]tudent anything resembling a FAPE and, based on the testimony presented, it seems quite likely that the [s]tudent w[ould] be forced to repeat the eighth grade for a third time" (id.).

Next, the IHO determined that although the district had denied the student a FAPE, the district's task of providing a FAPE was made "tremendously more difficult" by the parents (IHO Decision at p. 31).[5] The IHO further noted that the parents, specifically the student's father, lodged "numerous outlandish and baseless allegations" against the IHO and counsel for the district and was at times belligerent, combative and often could not control his behavior during the impartial hearing process (id. at pp. 31-32). The IHO noted that the parents' action had contributed significantly to the delay in reaching a resolution to this case (id. at p. 32).[6] The IHO also noted that the "blizzard of emails" sent by the parents reflect a "deep-seeded paranoia" and distrust of everyone in the district, with particular "vitriol" directed at the district's attorney (id.). The IHO noted that the parents seek the student's return to the BOCES program, but the parents have not commenced an action in federal court to seek enforcement of a prior IHO order which directed the student to be returned to the BOCES program, and instead filed a new due process complaint notice seeking enforcement of the prior IHO order (id.). The IHO noted that when the option to proceed in federal court was "expressly pointed out," the parents mistakenly claimed they needed a second IHO order which repeated the direction that the district return the student to BOCES prior to proceeding to federal court (id. at p. 33).

Additionally, the IHO noted that the parents became "incensed" that the IHO would conduct the hearing virtually and withdrew their due process complaint notice despite the fact that the IHO was prepared to issue a pendency order which would have helped the parties formulate a plan for the student (IHO Decision at p. 33). The IHO found that "the parents took active steps to delay the case to the extreme detriment of the [s]tudent," that "one is at a loss to understand [their] motives at times," and that their communications with the IHO "reveal a troubling lack of insight as to how their actions have adversely impacted their child" (id.).

Moreover, the IHO noted that the parents have carried their "combative posture" to the CSE meetings where they have been repeatedly acted belligerent with the CSE members and that the evidence reflected that as to the CSE meeting that occurred in December 2024, the father was twice removed from the meeting for "screaming and arguing with the other CSE members" and ultimately, the CSE was forced to convene a third time without the parents because they could not even engage in a productive discussion with the parents present (IHO Decision at p. 33). In addition, the IHO noted the parents have behaved in a similar fashion during resolution meetings

[5] The IHO noted that through the course of proceedings, the parents have managed to have no less than seven IHOs recuse themselves (IHO Decision at p. 31).

[6] The IHO noted that the student's mother's behavior improved substantially over the course of the matter, and she was very composed and even conducted professional, succinct and effective cross-examination of the district's witnesses (IHO Decision at p. 31 n. 25).

and that such behavior, combined with "their dilatory litigation tactics, which have had the net effect of harming the [s]tudent, tread dangerously close to educational neglect on the part of the [p]arents" (id. at p. 34).[7]

Regarding the student, the IHO found the parents' request to have the student return to BOCES was "to put it mildly, difficult to comprehend" given that since the student's enrollment at BOCES in September 2023, the student had been quite clear about his feelings about BOCES and that according to the neuropsychologist who evaluated the student in January 2025, the student frequently complained about going to school, did not want to go to BOCES, and had an aversion to BOCES which stemmed from multiple bullying incidents that he had either experienced or witnessed, some of which became quite serious (IHO Decision at pp. 34-35; see Parent Ex. W). The IHO found that the student made it clear in January 2025 that he did not want to remain at BOCES which he expressed by frequently eloping and putting himself and staff in highly fraught situations (IHO Decision at p. 35).

Accordingly, the IHO determined that though "there [wa]s plenty of blame to go around for the situation the [s]tudent currently finds himself in," at this point, there was no basis to order the student's return to BOCES since the student "adamantly does not wish to be there and forcing him to go to a place he neither wishes to be nor [was] welcome would seem, to say the least, counterproductive, counterintuitive, and would likely lead to an exacerbation of the [s]tudent's behavioral problems" (IHO Decision at p. 35).

The IHO also determined that the student could not continue indefinitely in a 1:1 educational environment that was not serving the student's academic, social or therapeutic needs; however, the IHO noted that there was sufficient evidence in the record to demonstrate that the student represented a danger to himself and/or others and thus concluded that the student required an IAES (IHO Decision at pp. 35-36). The IHO noted that the "evidence includes, among other things, the [s]tudent eloping and proceeding to travel in or toward a heavily trafficked street, punching a staff member, and making threats to harm himself or others," but that the student's mother minimized or outright denied the danger to staff members and himself (IHO Decision at p. 36). The IHO determined that since neither party had presented a workable plan for the student's education the only option was to continue the student's current placement in the 1:1 educational program (id. at p. 36). The IHO noted that such placement was temporary, and the parties would have to work together (id.).

As a result of his findings, the IHO determined that the student represented a danger to himself and others, the student requires an IEAS and that the current 1:1 setting represented the IAES (IHO Decision at p. 37). The IHO also ordered: 1) for the student to continue in his current 1:1 program for a period not to exceed forty-five days from the date of the IHO decision; 2) absent extraordinary circumstances, all instruction and related services shall be in person; 3) during the period of the IAES, the district shall assign a 1:1, full day, applied behavior analysis (ABA) specialist to work with the student at the expense of the district and that if no ABA provider was immediately available, the district shall assign a monitor to the student; the district to assign a

[7] The IHO cited to the New York Family Court Act § 1012[f][1][A] to support such statement (IHO Decision at p. 34 n. 27).

special education teacher support services (SETSS)/ABA provider in place of the student's current tutor, but if no such provider was immediately available, the student shall still be assigned a 1:1 ABA provider; 4) the district to fund an independent FBA to be conducted by a BCBA; 5) the district to fund an independent occupational therapy evaluation; 6) the district to fund an independent speech-language therapy evaluation; 7) the district to fund an independent auditory processing evaluations by providers of the parents choosing; 8) that if the parents are unable to locate providers to conduct the evaluations within thirty days, the district shall conduct the evaluations for which the parents could not locate providers and the parents are directed to sign whatever consent forms are necessary to facilitate those evaluations and that both parties must be included in any communications with the independent or district evaluators; 9) for the parents to provide copies of all independent evaluation reports to the district within twenty-four hours of receipt of said evaluations; 10) upon completion of the evaluations, the CSE shall reconvene, virtually, upon reasonable notice to the parent and consider, among other things, providing the student with 1:1 SETSS/ABA instruction (either in school, at home, or both), creating an appropriate 6:1+1 or 8:1+1 classroom for the student, an extended school year, removing group counseling and making all counseling 1:1, and explore all possible alternative means to increase the student's ability to have social interaction and what possible compensatory education the student may be entitled to; 11) the district to fund the cost of the independent neuropsychological evaluation obtained by the parents, or if the parents have already paid for such evaluation, the district shall reimburse them for the cost of the evaluation; 12) the district to send weekly written reports via email to the parents regarding the student's progress in his educational setting; and 13) the parents to obtain a medication review from the student's psychiatrist (IHO Decision at pp. 37-39). The IHO also encouraged the parents to find opportunities for the student to socialize outside of the school environment and directed the district enter his decision on a system used to track such orders (id. at p. 39).

IV. Appeal for State-Level Review

The parents appeal. According to the parents, 1) the IHO was biased by allowing ex parte communications; 2) the district's due process complaint filings were inappropriate and illegal as it was a disagreement with a prior IHO's decision; 3) the IHO erred in his determination that the parents' motion to dismiss was untimely; 4) the IHO erroneously held the impartial hearings virtually or telephonically over the objections of the parents; 5) the IHO erroneously accepted all the district's documentary evidence into the hearing record over the parents' objection as some documents contained "witness statements or observations" of persons the parents were not able to cross-examine; 6) the IHO improperly determined that the student was receiving an education despite the testimony of the student's "tutor" that, on a good day, the student would complete two assignments, thus showing the student was not being provided a proper education; 7) the IHO improperly determined that the student was receiving group counseling; 8) the IHO improperly determined that the parents agreed to return the student to the BOCES program, when in fact the parents' primary request was for the district to create an 8:1+1 program for the student and during the time it takes for such program creation, to place the student in an 8:1+1 program either at BOCES or another available program location; and 9) the IHO failed to consider the parents' defenses of conspiracy and predetermination.

As relief, the parents request that 1) "the record to reflect the [denial] of rights by th[e] IHO, and corrective action is taken against the IHO in any form available; 2) for an order directing

the district create a 8: 1+1 or 6:1+1 placement immediately and place the student in that placement, along with a 1:1 ABA monitor at all times; 3) for an order awarding all evaluations be paid for by the district as independent education evaluations (IEEs), and lists of providers for those evaluations to be updated and provided immediately to the parents to allow them to have all evaluations performed; and 4) an order directing the district to provide the student extended school year services to allow the student to "attempt to catch up and be prepared to move on to 9th grade" and to provide full school days throughout the year until the parents and CSE agree that the student has returned to the position he should have been in before the suspensions took place.

The district did not file an answer or other responsive pleading in this matter. The district filed a copy of the hearing record with the Office of State Review on April 8, 2024. On April 15, 2025, the district's attorney filed correspondence with the Office of State Review together with an attached email dated March 18, 2024 sent to the parent. The April 15, 2025 letter indicated that she received the parents' "Notice of Appeal" dated March 16, 2025; however, she had not received a notice of intention to seek review, a case information statement or the request for review in accordance with Part 279 despite reaching out to the parents via the email on March 18, 2025 in an attempt to resolve these deficiencies. The district's letter is not a substitute for a pleading in accordance with Part 279 and the facts as stated are only recited herein for completeness of this decision.

V. Discussion

As further described below, I am constrained to dismiss the parents' appeal because there is no evidence that the appeal was properly initiated against the district in compliance with State regulations. Accordingly, the appeal must be dismissed.

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 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]).

On March 17, 2025,[8] the parents filed the following documents with the Office of State Review: a notice of intention to seek review (dated March 16, 2025), a notice of request for review (dated March 10, 2025), a request for review (dated March 16, 2025), and the eleven documents mentioned above (see SRO Exs. 1-11). The parents failed to comply with Part 279 of State regulations because they failed to file a verified pleading and failed to include proof of personal service of the request for review upon respondent and proof of personal service of the notice of intention to seek review upon respondent as required by State regulation (8 NYCRR 279.4[e]; see 8 NYCRR 279.4[b]).[9]

Additionally, this is not the parents' first review proceeding. The parents had initiated two prior appeals in December 2024 with far greater compliance with the practice regulations (see generally Application of a Student with a Disability, Appeal No. 24-494; Application of a Student with a Disability, Appeal No. 24-495). In both prior appeals before the Office of State Review,

[8] The filings were made after business hours on March 16, 2025, which were received on next day's business.

[9] 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 and B); however, the parents' documents did not include an affidavit of verification or affidavit of personal service (available on the website as forms D and E). It was pointed out the parents in both Application of a Student with a Disability, Appeal No. 24-494 and Application of a Student with a Disability, Appeal No. 24-495 that they had failed to verify their pleadings in those proceedings, and they may not continue to file non-compliant papers. That particular defect is of less consequence in this case; however, due to the overall defect in personal service of the request for review upon the district and the outcome would have been the same regardless of whether the request for review had been properly verified.

the parents properly and timely personally served the district the pleading papers and properly filed affidavits of service with the Office of State Review, thus demonstrating they knew and could comply with the practice regulations governing appeals (id.; see also 8 NYCRR 279.4[b], [c]). Accordingly, it cannot be said that the parents were unaware of how to effectuate proper personal service of compliant papers upon the district in a State-level review. Accordingly, I will dismiss the appeal for failure to personally serve the district in accordance to practice regulations.

VI. Conclusion

Based on the foregoing, the appeal is dismissed for failure to properly initiate the appeal.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
April 16, 2025

JUSTYN P. BATES
STATE REVIEW OFFICER