The University of the State of New York

The State Education Department
State Review Officer
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No. 25-166

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 Board of Education of the Bridgehampton Union Free School District

Appearances:
Gottlieb & Wang LLP, attorneys for petitioners, by Qian Julie Wang, Esq.

Volz & Vigliotta, PLLC, attorneys for respondent, by Michael G. Vigliotta, 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. Petitioners (the parents) appeal from a decision of an impartial hearing officer (IHO) which denied their request that respondent (the district) fund the costs of their son's tuition at the Winston Preparatory School (Winston Prep) for the 2024-25 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

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

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

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

Given the limited nature of the appeal and the procedural posture of the matter—namely that the IHO dismissed the parents' due process complaint notice based upon motion practice by the parties—the description of facts and educational history of the student in this matter are derived from allegations in the parents' due process complaint notice dated October 21, 2024.[1]

[1] No evidentiary hearing on the merits was held in this matter and therefore no exhibits or witness testimony were made part of the hearing record. As part of the certified hearing record submitted on appeal, the district included its November 8, 2024 Motion to Dismiss with exhibits, the parents' November 27, 2024 Opposition to the Motion to Dismiss with exhibits, the district's December 6, 2024 Reply in Support of its Motion to Dismiss, email

In their due process complaint notice, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2024-25 school year by failing to develop an IEP for the student (see Due Process Compl. Not. at pp. 1-4).

According to the parents, the student was found eligible for special education and related services as a student with autism for the 2023-24 school year and attended Winston Prep for the 2023-24 school year, as a result of a settlement with the district (Due Process Compl. Not. at p. 1). The parents also indicated that the student attended the spring 2024 Winston Prep graduation ceremony but asserted that the student "did not fully participate" and "did not receive a 'regular high school diploma' as he did not meet graduation requirements" (id.). The parents further alleged that they attempted to participate in CSE meetings held on April 17, 2024, and on May 29, 2024, however, they contended that the CSE excluded their input, ignored all available documentation, and refused to develop an IEP for the 2024-25 school year (id.). The parents alleged that "the CSE erroneously insisted" that the student had already earned a high school diploma and was no longer eligible for special education under the IDEA and not entitled to a FAPE for the 2024-25 school year (id. at pp. 1-2).

The parents next argued that they notified the CSE prior to the April 17, 2024 CSE meeting, that the student was not on track to graduate in June 2024 and "expressed their desire for an appropriate IEP and placement" for the 2024-25 school year (Due Process Compl. Not. at p. 2). The parents claimed that they shared a privately obtained neuropsychological evaluation with the CSE and arranged for the participation of the director of admissions from Winston Prep (id.). The parents further asserted that during the April 2024 CSE meeting, "the CSE flatly refused to consider offering the [s]tudent an IEP" relying on the student's transcript from when he last attended public school two years earlier (id.). The parents contended that the April 2024 CSE also reviewed the student's transcript from Winston Prep and concluded that the student was due to graduate in June 2024 because he had completed core academic courses (id.).

In response to the April 2024 CSE's conclusions, the parents alleged that they "attempted to explain that the [s]tudent's public school grades had been improperly inflated and that his coursework at Winston [Prep] had been heavily modified" (Due Process Compl. Not. at p. 2). The parents argued that the CSE failed to conduct a triennial reevaluation, refused to reconsider its refusal to develop an IEP, and failed to provide the parents with prior written notice of its determinations (id.). According to the parents, the CSE reconvened on May 29, 2024, with the participation of their private evaluator, who they hoped would "better explain the [s]tudent's unreadiness to graduate high school" (id. at p. 3). The parents contended that the May 2024 CSE refused to consider developing an IEP and insisted that the student had met State requirements for graduation (id.). In June 2024, the student attended Winston Prep's graduation ceremony and according to the parents, the student received a certificate of completion, which was not the same

correspondence between the IHO and the parties related to scheduling oral arguments on the district's Motion to Dismiss, a January 15, 2025 transcript of the oral arguments, and the February 10, 2025 IHO's decision granting the district's Motion to Dismiss. A copy of the parents' October 21, 2024 due process complaint notice was omitted from the district's hearing record submission. A copy of the due process complaint notice was requested by the Office of State Review and was submitted by the district on April 28, 2025.

as a regular high school diploma, "but rather a 'lesser credential'" and that the student remained entitled to a FAPE for the 2024-25 school year (id.).

In their October 21, 2024 due process complaint notice, the parents also asserted that on June 24, 2024, they provided the district with 10-day written notice of their intention to unilaterally enroll the student at Winston Transitions for the 2024-25 school year and seek public funding for the cost of the student's attendance due to the district's failure to offer the student a FAPE (Due Process Compl. Not. at p. 3). The parents alleged that as a result of the district's refusal to provide an IEP for the 2024-25 school year, they had no choice but to enroll the student in the Winston Transitions Program in light of their view that the student remained eligible for special education programming from the district under the IDEA (id.). As relief, the parents requested tuition reimbursement and/or prospective funding for Winston Prep, specialized transportation, and reimbursement for private transportation costs (id.).

A. Motion to Dismiss

Prior to the time for convening an impartial hearing, the district filed a written motion to dismiss the parents' due process complaint notice with exhibits dated November 8, 2024 (Dist. Mot. to Dismiss). The district asserted that the student had earned in excess of 22 credits at the conclusion of the 2023-24 school year, thereby meeting the State requirements for graduation with a high school diploma, and was no longer eligible for special education services under the IDEA (id. at pp. 3, 5).[2] The district further argued that disposition of the parents' claims by motion to dismiss was appropriate in this instance, given that the district had refuted all of the parents' claims in their due process complaint notice with the documentary evidence annexed to the motion (id. at pp. 1-2).

In a written response with exhibits dated November 27, 2024, the parents opposed the district's motion to dismiss arguing that the student was not eligible to graduate with a high school diploma, had received a certificate of completion from Winston Prep and was under the age of 22, thus demonstrating that the student remained eligible for special education services (Parents' Opp'n to Mot. to Dismiss at p. 4).

In a reply in support of its motion to dismiss dated December 6, 2024, the district argued that under the three-pronged Burlington/Carter analysis, the parents were not entitled to tuition funding because the district had demonstrated as a matter of law that the student was not entitled to a FAPE for the 2024-25 school year (Reply in Supp. at pp. 1-2). The district further asserted that the parents failed to refute that the student had earned a sufficient number of credits to graduate, and merely contended that the student would benefit from further instruction (id. at p. 3).

[2] According to the IHO's decision, the district's motion to dismiss included exhibits A-E (IHO Decision at p. 3). The hearing record does not include any exhibit lists. Neither the parties, nor the IHO cited an "Exhibit E" as evidence in any of their submissions or in the IHO's decision, which tends to indicate that the description of the district's exhibits in the IHO's decision as including an "Exhibit E" is incorrect. The copy of the district's motion to dismiss filed as part of the certified hearing included exhibits A-D and appears to be complete.

B. IHO Proceedings and Decision

On January 15, 2025, the parties convened before an IHO for oral arguments on the district's motion to dismiss (Tr. pp. 1-43). In a decision dated February 10, 2025, the IHO determined that the district did not deny the student a FAPE for the 2024-25 school year (IHO Decision at p. 8). Although the IHO based his decision on the parties' written submissions, the IHO analyzed the parents' claims in their due process complaint notice using the Burlington/Carter framework (id. at pp. 4-8). The IHO found that the student had "received enough credits to graduate Winston [Prep] but instead of a high school diploma . . . was given a certificate of completion" (id.). The IHO determined that "[t]he fact that the student did not receive a diploma [wa]s not dispositive as to whether the student met the requirements to graduate" and that once "[t]he student met the requirements to graduate" by earning a sufficient number of credits to graduate, the district was no longer obligated "to provide special educational services" (id.).

Having found that the district did not deny the student a FAPE, the IHO found that it was unnecessary to consider whether Winston Prep was an appropriate unilateral placement or whether equitable considerations supported an award of tuition funding (IHO Decision at p. 8). In conclusion, the IHO dismissed the parents' due process complaint notice and denied their request for tuition funding for the 2024-25 school year (id. at p. 9).

IV. Appeal for State-Level Review

The parents appeal and allege that they were denied due process by the IHO's failure to conduct an impartial hearing. The parents also assert that the IHO applied the wrong legal standard to the district's motion to dismiss. The parents claim that it was error for the IHO to apply a Burlington/Carter analysis to the district's motion to dismiss. Specifically, the parents argue that had the IHO construed facts in the light most favorable to them, the IHO would not have dismissed the due process complaint notice. The parents further assert that the IHO erred in finding that the district did not deny the student a FAPE when the district conceded that the CSE refused to develop an IEP. The parents submit with their request for review three proposed exhibits and request that they all be considered on appeal. As relief, the parents request remand to the IHO for an evidentiary hearing on the merits of their claims.

In an answer, the district responds to the parents' claims and argues that the IHO's decision should be affirmed. The district asserts that the IHO did not err in dismissing the parents' due process complaint notice because the documentary evidence annexed to the district's motion to dismiss refuted all of the parents' claims. In addition, the district opposes consideration of the parents' documents as additional evidence and asserts that the parents' request for review does not comport with the practice regulations.[3]

[3] The district contends that the parents' request for review should be dismissed for failure to comply with State regulations governing the initiation of the review and the form requirements for pleadings (see 8 NYCRR 279.2[b]; 8 NYCRR 279.8[b]). More specifically, in this instance, the district argues that the parents' appeal should be rejected because the notice of intention to seek review was served late and that the request for review exceeded the page limitations. In general, 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 the dismissal of a request for review by an SRO (8 NYCRR 279.8[a]-[b]; 279.13; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 440-41 [W.D.N.Y. 2012]

In a reply to the district's answer, the parents reassert their claims set forth in the request for review and argue that the district was not prejudiced by any failure to comply with the practice regulations.

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. 386, 399 [2017]). While the Second Circuit has emphasized that school districts must comply with the checklist of procedures for developing a student's IEP and indicated that "[m]ultiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not" (R.E., 694 F.3d at 190-91), the Court has also explained that not all procedural errors render an IEP legally inadequate under the IDEA (M.H., 685 F.3d at 245; A.C. v. Bd. of Educ. of the Chappaqua Cent. Sch. Dist., 553 F.3d 165, 172 [2d Cir. 2009]; Grim v. Rhinebeck Cent. Sch. Dist., 346 F.3d 377, 381 [2d Cir. 2003]). Under the IDEA, if procedural violations are alleged, an administrative officer may find that a student did not receive a FAPE only if the procedural

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[upholding dismissal of a petition for review that was untimely and exceeded page limitations]). However, "judgments rendered solely on the basis of easily corrected procedural errors or 'mere technicalities,' are generally disfavored" (J.E. v. Chappaqua Cent. Sch. Dist., 2015 WL 4934535, at *4-*6 [S.D.N.Y. Aug. 17, 2015], quoting Foman v. Davis, 371 U.S. 178 [1962]). Among other things, the "service of a notice of intention to seek review upon a school district serves the purpose of facilitating the timely filing of the hearing record by the district with the Office of State Review (see Application of a Student with a Disability, Appeal No. 24-083; Application of a Student with a Disability, Appeal No. 21-054; Application of a Student with a Disability, Appeal No. 16-040; Application of a Student Suspected of Having a Disability, Appeal No. 12-014). Although the district asserts that the parents' appeal should be dismissed on these grounds, I note that the parents initiated the appeal by serving a request for review on a timely basis and that the district otherwise was able to timely file the certified hearing record in this matter and fully respond to the parents' allegations in their request for review. Thus, in the exercise of my discretion I decline to dismiss the parents' request for review on this basis.

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., 580 U.S. at 404). 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., 580 U.S. at 403 [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]).[4]

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

[4] 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., 580 U.S. at 402).

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

The parents submit with their request for review three proposed exhibits and request that they all be considered on appeal. Generally, documentary evidence not presented at an impartial hearing is 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 to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; 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]). At the outset, I note that the proposed exhibits consist of testimonial affidavits, which the parents assert are representative of the type of testimony the parents would have offered in support of their claims had the IHO conducted an impartial hearing. Related in part to the parents' request for consideration of the affidavits as additional evidence are the parents' claims that the IHO denied the parents' their due process rights by resolving their claims in a decision based on the documentary evidence submitted by the parties in support of and in opposition to the district's motion to dismiss.

As a general matter, summary disposition procedures akin to those used in judicial proceedings are a permissible mechanism for resolving certain proceedings under the IDEA (see, e.g., Application of a Student with a Disability, Appeal No. 19-102; Application of the Dep't of Educ., Appeal No. 11-004),[5] but generally regulations do not address the particulars of motion practice.[6] Instead, unless specifically prohibited by regulation, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, in such matters, so long as

[5] While permissible, summary disposition procedures should be used with caution and they are only appropriate in instances in which "the parties have had a meaningful opportunity to present evidence and the non-moving party is unable to identify any genuine issue of material fact" (J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 69 [2d Cir. 2000]).

[6] The exception is a sufficiency challenge, which addresses a complaint on its face and whether the complaint lacks the elements required by the IDEA (8 NYCRR 200.5[i]; see 20 U.S.C. § 1415[b][7], [c][2]; 34 CFR 300.508); however, there is no allegation in the present matter regarding the sufficiency of the parents' due process complaint notice.

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]).

Although the IHO did not hold an evidentiary hearing, both parties submitted documentary evidence to support their respective positions on the district's motion to dismiss and both parties presented oral arguments on January 15, 2025 (Tr. pp. 1-43; see Dist. Mot. to Dismiss Exs. A-D; Parents' Opp'n to Mot. to Dismiss Exs. 1-5; Reply in Supp.). The IHO relied on the parties' submissions in rendering his decision (IHO Decision at pp. 5-8).

The IHO's sole reliance on documentary evidence in determining the merits of the parents' claims was not improper under the circumstances of this matter. The case law in this jurisdiction related to IDEA disputes does not provide for a per se rule that a district automatically fails to meet its burden of proof simply because the evidence does not consist of witness testimony. In such cases, the documentary evidence must be discussed as it relates to the disputed issues because a district could prevail on some or all of the disputed issues related to a FAPE for a student by producing evidence consisting of documentary evidence. An IHO is required to conduct a fact specific analysis in order to determine whether a district offered the student a FAPE and a district must ensure that the hearing record includes evidence addressing the particular issues raised by the parents in their due process complaint notice. The sufficiency of the evidence presented should be determined after weighing the relative strengths and weakness of the parties' evidence in light of the allegations and the relevant legal standards. To be clear, there is no procedural requirement that the district call witnesses at the impartial hearing in order to address the parents' due process complaint notice, especially after the district submitted extensive documentation that is required under the procedures of the IDEA itself. Here, the district correctly argued and as discussed more fully below that it was able to refute all of the claims set forth in the parents' due process complaint notice in its motion to dismiss with the exhibits.

While I find that the IHO's decision was supported by the evidence before him in the parties' submissions, out of an abundance of caution, I have reviewed and considered the parents' testimonial affidavits submitted with their request for review as additional evidence (see SRO Exs. A-C). For the reasons that follow and upon my independent review of the entire hearing record, I find no basis to disturb the IHO's determinations.

In their request for review, the parents assert that the IHO erred in finding that the student was not entitled to a FAPE and in finding that the district met its burden under Burlington/Carter when it was undisputed that the CSE refused to develop an IEP for the 2024-25 school year.

In New York State, a student who is otherwise eligible as a student with a disability, may continue to obtain services under the IDEA until he or she receives either a local or Regents high school diploma (34 CFR 300.102[a][3][i]; 8 NYCRR 100.5[b][7][iii]; Application of the Bd. of Educ., Appeal No. 05-084; Application of the Bd. of Educ., Appeal No. 05-037), or until the conclusion of the 10-month school year in which he or she turns age 21 (Educ. Law §§ 3202[1], 4401[1], 4402[5][b]; 8 NYCRR 100.9[e], 200.1[zz]; see 34 CFR 300.102[a][1], [a][3][ii];

Application of a Child with a Disability, Appeal No. 04-100).[7] According to State regulations describing diploma requirements, a student first entering grade nine in September 2001 and thereafter shall meet the commencement-level New York State learning standards by successfully completing 22 units of credit and five New York State assessments (8 NYCRR 100.5[b][7][iv]).

While SROs, at times, waded into the vicinity of confirming whether a student has met the State requirements to obtain either a Regents or local diploma—as in this instance—generally, the issuance of a diploma has historically been the province of the Commissioner of Education to consider the award of course credit and the related issuance or revocation of a diploma as a result (see, e.g., Appeal of K.D., 52 Ed Dept Rep, Decision No. 16,460), and generally, outside of instances where a student's graduation is a determinative factor as to the student's continuing eligibility for special education, an impartial hearing is not the proper forum for disputes involving a district's decision to award or its failure to award academic course credit because such hearings are limited to issues concerning the identification, evaluation, and educational placement of the student, or the provision of a FAPE to a student (20 U.S.C. § 1415[b][6]; 34 CFR. 300.507[a][1]; 8 NYCRR 200.5[i]; Application of the Bd. of Educ., Appeal No. 10-124; see Letter to Silber, 213 IDELR 110 [OSEP 1987] [responding to a series of questions posed by a parent on topics including classification and a local agency's rules regarding the accumulation of credits toward graduation and holding that the only issue amenable to an impartial hearing under federal law was whether the student should be classified]). Further, graduation credits and requirements generally fall under the purview of the district's discretionary authority, again subject to the review of the Commissioner (see Educ. Law § 1709[3] [authorizing a board of education "to prescribe the course of study by which pupils of the schools shall be graded and classified, and to regulate the admission of pupils and their transfer from one class or department to another, as their scholarship shall warrant"]; Coleman v. Newburgh Enlarged City Sch. Dist., 503 F.3d 198, 205-06 [2d Cir. 2007] [opining that students do not have a right under the IDEA "to graduate on a date certain or from a particular educational institution"]; see also Kajoshaj v. New York City Dep't of Educ., 543 Fed. App'x 11, 17 [2d Cir. Oct. 15, 2013], citing Matter of Isquith v. Levitt, 285 App. Div. 833 [2d Dep't 1955] [finding that "[a]fter a child is admitted to a public school, the board of education has the power to provide rules and regulations for promotion from grade to grade, based not on age, but on training, knowledge and ability"]).

In this case, the disputed issue turns not on the adequacy of the special education programming offered by the district or Winston Prep in previous school years, but whether the student was required to be admitted to the public schools at all during the 2024-25 school year under Education Law §§ 1709 and 3202 due to the district's view that student previously met the graduation requirements. In their request for review, the parents conflate their views of student's readiness for postsecondary goals and alleged delayed skill development with the accumulation of

[7] Recently, federal and State courts have addressed a student's entitlement to IDEA services through the age of 22. The Second Circuit has held that Connecticut's state-administered, publicly funded adult education programs constituted "public education" under the IDEA, and thus, ending an entitlement to a FAPE for individuals who were eligible for special education and between the ages of 21 and 22 violated the IDEA (A.R. vs. Conn. St. Bd. of Educ., 5 F.4th 155, 163-67 [2d Cir. 2021]; Mahopac Cent. Sch. Dist. v. New York State Educ. Dep't, 2025 WL 1954096, at *5 [3d Dep't July 17, 2025]; Katonah-Lewisboro Union Free Sch. Dist. v. New York State Educ. Dep't, 2025 WL 1954074, at *4 [3d Dep't July 17, 2025]). However, these cases have no impact on a student's entitlement to IDEA services ceasing after obtaining a high school diploma.

credits sufficient for this student, or any student similarly situated, to meet the requirements for graduation. The IHO found that there was evidence that the district found sufficient to conclude student had met the State requirements for graduation based on a review of the student's academic records from public school as well as from Winston Prep, which demonstrated the student had earned credits in excess of the 22 credits required for high school graduation (IHO Decision at p. 8). Indeed, the evidence shows that the student had successfully completed both his ninth and tenth grade school years—2020-21 and 2021-22 school years, respectively—at a public school within the district and was successfully earning credits in regular education classes (see Dist. Mot. to Dismiss Ex. D). During the 2020-21 school year, the student earned an 86 in English 9, an 89 in Algebra 1, an 83 in Living Environment Regents, and an 83 in Global History and Geography 1 R, among others (id.). At the completion of the 2020-21 school year, the student had earned a grade point average (GPA) of 88.6857 and 7 credits toward graduation (id.). Likewise, for the 2021-22 school year, the student received a grade of 84 in English 10, a 90 in "Geometry in Arch," an 82 in Earth Science Regents, and an 83 in Global History and Geography II R, all of which culminated in an 88.0738 GPA with 6.5 earned credits towards graduation (id.). While attending public school, the student earned 13.5 credits toward graduation and successfully passed the Global History and Geography Regents exam (id.).

Upon enrolling in Winston Prep for the 2022-23 and 2023-24 school years, the records submitted with the motion to dismiss all showed that student continued to earn successful grades. During the 2022-23 school year, he consistently earned Bs in Math, History, Science, and Language Skills, among others (Dist. Mot. to Dismiss Ex. B). For the 2023-24 school year, the student received As and Bs in his courses (id.). Notably, during the student's time at Winston Prep, the lowest grade he received in any of his courses was a B-, which signified a score of 80-83 (id.). According to the student's transcript, Winston Prep awarded one academic credit for completion of each year-long course, and one-half credit for each semester-long course (id.). Accordingly, the student completed 15 year-long courses and two semester-long courses while at Winston Prep, ostensibly earning at least 16 academic credits (id.). During the four years the student attended high school while enrolled in public school and while attending Winston Prep, the student earned a total of 29.5 academic credits toward graduation. Further, while at Winston Prep, the student was enrolled in a course at Landmark College titled "EDU1011/Lecture/V Perspect in Learning" (id.). Upon the student's completion of the 2023-24 school year—designated on his academic record as Grade 12—he was awarded a "certificate of completion" by Winston Prep (Dist. Mot. to Dismiss Exs. B; C). It is the role of district administrators under the oversight of the local board of education to assess whether students have earned sufficient credits toward satisfying local or Regents diploma requirements under Part 100, not the CSE, which is charged with locating, evaluating and developing individualized special education programming for students with disabilities (8 NYCRR 100.1[b], 100.5). Review of the district's documentary evidence in support of its motion to dismiss demonstrated that the district plausibly reached the conclusion that the student had earned more than the necessary 22 credits to earn a high school diploma.

The parents' attorney argued that the student's coursework at Winston Prep did not reflect his grade level and was in fact heavily modified to accommodate the student's academic needs during oral argument before the IHO, however what was lacking was any sense of why the IHO would have jurisdiction over the school district's Part 100 determination regarding the credits earned toward the diploma requirements and, by extension, the right to attended the public school (Tr. pp. 22-23; see Tr. pp. 1-43). Such challenges and determinations under Part 100 as well as

whether an individual, disabled or not, is entitled to attend the public school are typically made at the local level and are potentially subject to review by the Commissioner of Education. To be sure, in their opposition to the district's motion to dismiss, the parents submitted a neuropsychological evaluation to support their position that the student's coursework at Winston Prep did not accurately reflect his ability to graduate (see Opp'n to Mot. to Dismiss Ex. 1). Noting that the student was enrolled in district public schools from second grade through tenth grade, the evaluation stated that "[d]espite receiving special education services [at the public school], [the student] struggled to make adequate progress, particularly as the curricular and social demands intensified" (id. at p. 3). However, for these attacks to be successful, the evaluator would have to have the authority to make the determination in the first place, but that authority rests with the district administrators.

The additional evidence does not help the parent overcome the necessary hurdles in this proceeding. According to the testimonial affidavit of the assistant head of school at Winston Prep, "it was clear to all—faculty and administration alike—that [the student] had not attained the skills and proficiencies that would justify a regular high school diploma" (SRO Ex. C ¶ 7). The assistant head of school further opined that Winston Prep's credits "[we]re not equivalent to those earned in public school for purposes of assessing whether a student has met New York State standards for Regents or local high school diplomas" (id.). However, once again, this individual from Winston Prep cannot make the determination of whether the student satisfied the requirements of Part 100 or was eligible to attend the public schools.[8]

I have considered all of the evidence before the IHO as well as the additional evidence provided by the parents in support of their appeal, and I find no basis in the hearing record before me to disturb the IHO's findings. The student's academic records and earned credits from his high school career align with the district's position that the student was no longer entitled to attend to the public schools by reason of having met the diploma requirements, and the opinions of private evaluators and private school personnel cannot override the administrative determination by district regarding the adequacy of his credits under Part 100, at least in this forum where it became clear by the parties submissions that jurisdiction is lacking. Based upon my independent review of the proceedings showing that the district established that the student was not entitled to attend the public school, there was no reason for the IHO to continue on and hold an evidentiary hearing regarding whether the district denied the student a FAPE for the 2024-25 school year.

VII. Conclusion

In summary, my review of the evidence in the hearing record reveals no error in the IHO's determination that the district properly declined to develop an IEP for the 2024-25 school year. Accordingly, the IHO correctly denied the parents' request for relief.

I have considered the parties' remaining contentions and find them to be without merit.

[8] While the assistant head of school claimed that a set of Winston Prep's graduation requirements were provided to the district during the CSE meeting, that evidence was not supplied in the parents' opposition papers before the IHO and, once again, it is not the CSE that determines whether a student has satisfied the general education requirements for graduation (SRO Ex. C ¶ 7).

THE APPEAL IS DISMISSED.

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

JUSTYN P. BATES
STATE REVIEW OFFICER