



# The University of the State of New York

## The State Education Department

### State Review Officer

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No. 25-182

## **Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability**

### **Appearances:**

Liz Vladeck, General Counsel, attorneys for petitioner, by Frank J. Lamonica, 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 district) appeals from a decision of an impartial hearing officer (IHO) which granted respondents' (the parents') request that the district fund the costs of their son's private educational services delivered by Yeled v'Yalda Early Childhood Center, Inc. (Yeled) for the 2023-24 school year. The appeal must be dismissed.

### **II. Overview—Administrative Procedures**

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 the same committee that designs educational programing for students with disabilities under the IDEA (20 U.S.C. §§ 1400-1482), namely 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, 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**

Given the dismissal of this matter on procedural grounds, a detailed recitation of the facts and procedural history of this matter is not necessary. Briefly, a CSE convened on May 19, 2021 to develop an IESP for the student for the 2021-22 school year (Dist. Ex. 4 at pp. 1, 14). The May 2021 IEP reflected that at that time the parent was "choosing parental school placement" and

identified a particular school (*id.* at pp. 3-4). The May 2021 CSE found the student eligible for special education as a student with a speech or language impairment and recommended five periods per week of special education teacher support services (SETSS), three 30-minute sessions of individual speech-language therapy, and three 30-minute sessions of individual occupational therapy (OT) (*id.* at pp. 11-12).<sup>1, 2</sup>

A CSE convened on October 17, 2022 to conduct the student's annual review and developed an IESP for the student with a projected implementation date of October 31, 2022 (Parent Ex. B at pp. 1, 8). According to the October 2022 IEP, "[n]o progress reports were provided" and the "[p]arent was not available" (*id.* at p. 1). The October 2022 IEP repeated the student's present levels of performance, the annual goals, and the programming recommendations from the May 2021 IESP (compare Parent Ex. B at pp. 1-8, with Dist. Ex. 4 at pp. 1-14).

Although the district's special education student information system (SESS) events log reflects that documents referred to as a "Prior Notice[s] for Placement/Parentally Placed" were sent to the parent on April 5 and April 26, 2023, the hearing record does not include a copy of any notices bearing those dates (Dist. Ex. 7 at p. 1).<sup>3</sup>

On August 8, 2023, the parents executed a contract with Yeled for the provision of "Special Education and/or Related Services" to the student while she attended Yeled's "Special Services program" for the 2023-24 school year (Parent Ex. C). In a letter dated August 21, 2023, the parents expressed their disagreements with the student's October 2022 IESP and notified the district that the student would begin receiving services from Yeled for the 2023-24 school year and that they would seek public funding for the services (District Ex. M).

In a due process complaint notice dated July 13, 2024, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2023-24 school year, alleging various procedural and substantive violations related to the May 2021 IEP, including as related to the composition of the CSE, the sufficiency of evaluative information before the CSE, and the appropriateness of annual goals in the May 2021 IESP (see Parent Ex. A at p. 1). The parents further alleged that the district had not reconvened a CSE since the May 2021 meeting (*id.* at p. 2). The parents alleged that, due to the CSE's failure to provide equitable services for the student, the parents obtained services from Yeled (*id.*). The parents sought pendency for the student based on a September 2020 preschool IEP consisting of nine hour per week of SEIT services, three 30-minute sessions per week of individual speech-language therapy, three 30-minute sessions per week of individual OT, and three 30-minute sessions per week of individual physical therapy (PT) (*id.* at pp. 1-2). For relief, the parents requested an award of "prospective funding/compensatory

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<sup>1</sup> The student's eligibility for special education as a student with a speech or language impairment is not in dispute (see 34 CFR 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

<sup>2</sup> 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.

<sup>3</sup> The events on the SESS events log dated before April 5, 2023 and after November 28, 2023 are redacted (see Dist. Ex. 7).

services for continuation of 9 hours of SETSS/SEIT per week, transportation, and related services" (*id.* at p. 2).

An impartial hearing convened before the Office of Administrative Trials and Hearings (OATH) on March 6, 2026 (*see* Tr. pp. 1-35). In a decision dated March 7, 2025, the IHO found that the district failed to meet its burden to prove that it offered the student a FAPE because the district did not deny that the student was entitled to services, and it did not deny that it failed to implement those services (IHO Decision at p. 5). The IHO went on to find that the parents met their burden of demonstrating that the unilaterally obtained services were appropriate for the student (*id.* at p. 6). Finally, the IHO found that equitable considerations supported an award of district funding of the student's services, finding that the weight of the evidence established that the parents cooperated with the district and its CSE (*id.* at p. 7). The IHO awarded direct funding of nine periods per week of bilingual Yiddish SETSS at a rate not to exceed \$198 per hour and funding of two 30-minute sessions each of OT and speech-language therapy at a rate not to exceed \$250 per hour for the 2024-25 school year (*id.* at p. 9).

#### **IV. Appeal for State-Level Review**

The district appeals, alleging that the IHO erred in not dismissing the matter because the parents failed to submit a written request for dual enrollment services to the district by June 1, 2023. The district further argues that the affirmative June 1 defense was timely raised at the impartial hearing and that the IHO acknowledged it in her finding of fact and decision but failed to meaningfully address the defense. The district also argues that the IHO lacked subject matter jurisdiction to hear the parents' claim. The district argues, in the alternative, that the IHO erred in finding that the services provided by Yeled were appropriate and argue that equitable considerations do not favor the parents' requested relief.

The parent has not submitted an answer or otherwise appeared in this matter.

#### **V. Discussion**

As a threshold matter, it must be determined whether the appeal should be dismissed due to the district's failure to effectuate personal service of the request for review.

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]). State regulations provide in relevant part that, "[i]n the event that a parent of a student with a disability is named as a respondent in a request for review, personal service of the request for review shall be made by delivering a copy thereof to the parent" (8 NYCRR 279.4[c]). When personal service upon a parent cannot be made after diligent attempts, an alternative form of service may be effectuated on a person of suitable age of discretion at the parent's residence along with a certified mailing or as directed by an SRO (8 NYCRR 279.4[c]). 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]).

Here, according to the declaration of service filed with the district's appeal, the district served the request for review upon the attorney who represented the parents during the impartial hearing by electronic mail on March 31, 2025 (see Dist. Decl. of Serv.). Although the district states in its declaration of service that the attorney agreed to waive personal service and to accept service on the parents' behalf via electronic mail, the district does not indicate that the parents agreed to waive personal service (see Dist. Decl. of Serv.).

The parents have not appeared in this matter; nor has an attorney appeared on the parents' behalf. The only communication received by the Office of State Review was a letter from the attorney who represented the parents during the impartial hearing, which stated that the attorney no longer represented the parents. In a separate letter, the former attorney for the parents further stated that all pleadings and notices had been provided to the parents on April 3, 2024 via email.

Given the description in the district's declaration of service, the district did not serve the parents with the request for review in the manner required by State regulation, as personal service on the parents was not made, and there is insufficient statement that the parents agreed to waive personal service (see 8 NYCRR 279.4[c]).

State regulations do not preclude a school district and a parent from agreeing to "waive" personal service of the request for review, and it is generally permitted for parties to agree to service by an alternate delivery method (see Application of a Student with a Disability, Appeal No. 25-313). The Office of State Review's website reflects this option as follows:

The State regulations do not preclude a school district and a parent from agreeing to "waive" the personal service method. Waiver of personal service is not permitted unless the party being served agrees to accept papers in an alternate delivery method. If both sides agree, it is strongly advisable for the parties to have such an agreement in writing.

(Overview to Part 279: Filing a Review for Review (Section I): Serve and File the Request for Review [emphasis in the original], available at <https://www.sro.nysesd.gov/book/serve-and-file-request-review>).

Here, there is no indication in this instance that the parents agreed to accept service of the request for review and supporting documents by electronic mail to the attorney identified in the district's declaration of service. Absent explicit waiver of personal service by the parent, service on an attorney is only appropriate once the matter is pending (8 NYCRR 279.5[e]; 279.6[c]; see CPLR 2103[b]). An attorney is not automatically cloaked with the authority to accept service of process and, even if counsel represents that he or she can accept process, it is not binding on the client unless the client is aware of the representation (Redbridge Bedford, LLC v. 159 N. 3rd St. Realty Holding Corp., 175 A.D.3d 1569, 1571[2d Dep't 2019]; Broman v. Stern, 172 A.D.2d 475, 476-77 [2d Dep't 1991]). The district's declaration of services makes no reference to an agreement with the parents regarding service and does not indicate that the district elicited from the attorney

confirmation of the parents' awareness of the attorney's acceptance of service in this matter. If anything, the cessation of the attorney-client relationship between the parents and the attorney who represented them during the impartial hearing further calls into question whether the parents agreed to the attorney accepting service on their behalf, and the communications from that attorney do not elucidate the matter. Accordingly, there is insufficient basis to conclude that the parent agreed to waive personal service or consented to service by an alternate delivery method (see Application of the Dep't of Educ., Appeal No. 25-331 [dismissing a district's appeal for failing to effectuate alternate service on the parent as directed by the SRO and instead serving a lay advocate who represented that she would accept email service on the parent's behalf]; Application of a Student with a Disability, Appeal No. 24-443 [dismissing a parent's appeal, for failure to effectuate proper personal service of the request for review on the district where the parent served the district's attorney by email without obtaining a waiver of personal service from the district]).

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]).

Under these circumstances, given the deficiencies in compliance with Part 279 and the defect in service on the parent, the appeal must be dismissed.

## **VI. Conclusion**

The request for review is dismissed due to the district's failure to initiate the appeal through personal service on the parent pursuant to State regulations; therefore, the necessary inquiry is at an end.

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
August 15, 2025**

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**SARAH L. HARRINGTON  
STATE REVIEW OFFICER**