



The University of the State of New York

The State Education Department

State Review Officer

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No. 25-305

Application of the BOARD OF EDUCATION OF THE SOUTH ORANGETOWN CENTRAL SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability

Appearances:

Shaw, Perelson, May & Lambert, LLP, attorneys for petitioner, by Michael K. Lambert, Esq.

Law Offices of Lauren A. Baum, PC, attorneys for respondents, by Lauren A. Baum, 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 found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse the parents for their son's tuition at SINAI Karasick Shalem High School at Torah Academy of Bergen County (SINAI at TABC) for the 2020-21 and 2021-22 school years. 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 parties' familiarity with this matter is presumed and given the disposition of this matter on procedural grounds, a detailed recitation of the student's educational history is not necessary. Briefly, the student had received diagnoses of autism spectrum disorder (ASD), with accompanying language impairment; attention deficit hyperactivity disorder (ADHD), predominantly inattentive presentation; and emerging anxiety (Parent Ex. H at p. 10). The student was found to be eligible for special education services as a student with autism and placed in the Comprehensive Application of Behavioral Analysis to Schooling (CABAS) program through the Rockland County Board of Cooperative Educational Services (BOCES) from kindergarten through fifth grade (id. at p. 2). For the student's middle school sixth through eighth grades, the student

attended the BOCES Practical Academics Vocational Education (PAVE) program (Parent Ex. H at p. 3; see Parent Exs. O; Q).¹

On May 12, 2020, the subcommittee on special education convened for the purposes of a reevaluation and annual review and continued to find the student eligible for special education services as a student with autism (see Dist. Ex. 3). For the student's ninth grade year, the May 2020 CSE recommended a 12:1+4 special class with the following related services: one 30-minute session per week of individual speech-language therapy, one 30-minute session per week of group (2:1) occupational therapy (OT), one 30-minute session every two weeks of group psychological counseling services in the therapy room, one 30-minute session per week of group speech-language therapy, and one 30-minute session every two weeks of group psychological counseling services in the classroom at the BOCES PAVE program (Dist. Ex. 3 at pp. 1, 13). Additionally, the May 2020 CSE recommended supplementary aids and services of refocusing and redirection to keep the student on task (id. at p. 13). The May 2020 CSE also recommended 12-month services, which consisted of a 12:1+2 special class together with one 30-minute session per week of group speech-language therapy, one 30-minute session per week of group OT, and one 30-minute session per week of group psychological counseling services (id. at pp. 1, 14).²

On August 14, 2020, the parents signed a tuition contract with SINAI at TABC for the student's attendance for the 2020-21 school year (Parent Ex. RR).

On August 18, 2020, the parents notified the district of their disagreement with the May 2020 CSE's recommendations and intent to unilaterally place the student at SINAI at TABC and seek funding/reimbursement for the 2020-21 school year tuition (see generally Parent Ex. D).

Thereafter, in response to the parents' August 18, 2020 letter, the CSE convened on September 3, 2020 (see Dist. Ex. 2). The September 2020 CSE stated that they would explore alternate placements for the student and reconvene as necessary (id. at p. 2). The September 2020 CSE continued to recommend the same program and related services as in the May 2020 IEP (compare Dist. Ex. 3 at pp. 1, 13-14, with Dist. Ex. 2 at pp. 1, 13-14).³

On March 11, 2021, the parents signed a tuition contract with SINAI at TABC for the 2021-22 school year (Parent Ex. OO).

On April 20, 2021, the subcommittee on special education convened for an annual review and to develop an IEP for the 2021-22 school year (10th grade) (see Dist. Ex. 1). The April 2021 CSE recommended a 12:1+4 special class with one 30-minute session per week of individual speech-language therapy, one 30-minute session per week of group (2:1) OT, one 30-minute session every two weeks of group psychological counseling services in the therapy room, one 30-minute session per week of group speech-language therapy, and one 30-minute session every two

¹ The student repeated eighth grade in the BOCES PAVE program (Parent Ex. H at p. 3).

² On May 26, 2020, the district sent the parents a prior written notice summarizing the recommendations of the May 2020 CSE (see Dist. Ex. 9).

³ On September 8, 2020, the district sent a prior written notice summarizing the recommendations of the September 2020 CSE (see Dist. Ex. 8).

weeks of group psychological counseling services in the classroom at the BOCES PAVE program (id. at pp. 1, 13). The April 2021 subcommittee continued to recommend refocusing and redirection as supplementary aids and services together with providing the student with verbal cues before transitioning between activities and locations (id. at p. 13). In addition, the April 2021 recommended the same 12-month services as the May 2020 CSE (compare Dist. Ex. 3 at pp. 1, 14, with Dist. Ex. 1 at pp. 1, 14).⁴

Next, on August 18, 2021, the parents notified the district that the recommendations in the April 2021 IEP were "identical to those made and rejected as inappropriate for [the student] in previous years" and was not appropriate for the student for the 2021-22 school year (Parent Ex. B at pp. 1-2). Therefore, the parents intended to unilaterally place the student at SINAI at TABC for the 2021-22 school year (id. at p. 3).

A. Due Process Complaint Notices

In a due process complaint notice dated January 27, 2022, the parents alleged that the district denied the student a free appropriate public education (FAPE) for the 2020-21 school year (see generally Parent Ex. C).

Specifically, the parents argued that the CSE failed to adequately consider or review sufficient and appropriate evaluative or documentary information; failed to adequately recommend appropriate, objectively measurable goals and short-term objectives; and failed to provide the parents with a meaningful opportunity to participate in the development of the student's IEPs for the 2020-21 school year (Parent Ex. C at pp. 1, 3). Additionally, the parents alleged that the recommended 12:1+4 special class did not provide the individualized support for the student, small group instruction, or a comparable peer group academically and socially, in order to make appropriate academic and social progress (id. pp. 3-5).

Next, the parents alleged that SINAI at TABC offered the student an individualized special education program with related services that enabled the student to make academic and social/emotional progress and avoid regression (Parent Ex. C at p. 7). In particular, the parents argued that the class sizes at SINAI at TABC were small and appropriate for the student and the student was provided individualized instruction and attention in small groups in core academics and offered vocational opportunities (id.). Furthermore, the parents asserted that equitable considerations did not warrant a reduction in their requested relief (id.).

As relief, the parents requested a finding that the district failed to offer the student FAPE for the 2020-21 school year and sought funding/reimbursement for tuition at SINAI at TABC, as well as costs for "comprehensive evaluations," including a vocational assessment (Parent Ex. C at p. 8).

In a second due process complaint notice dated November 7, 2022, the parents alleged that the district denied the student a FAPE for the 2021-22 school year (see generally Parent Ex. A). Similar to the allegations for the 2020-21 school year, the parents alleged that the district failed to

⁴ On April 26, 2021, the district sent a prior written notice of the recommendations set forth in the April 2021 IEP (see Dist. Ex. 7).

fully and adequately consider or review sufficient evaluative information in developing the IEP; failed to adequately recommend appropriate, objectively measurable goals and short-term objectives to assess the student's progress; failed to provide the parents with meaningful opportunity to participate in the development of the IEP; and recommended a 12:1+4 special class, which was not the least restrictive environment (LRE) for the student (id. at pp. 1-2, 4-5, 7).

The parents again argued that SINAI at TABC was an appropriate unilateral placement and that equitable considerations warranted an award of full funding (Parent Ex. A at p. 6). As relief, the parents requested a declaratory finding that the district failed to offer the student a FAPE for the 2021-22 school year and funding/reimbursement for tuition at SINAI at TABC (id. at p. 7).⁵

B. Impartial Hearing Officer Decision

An impartial hearing convened on May 10, 2023 and was completed on December 10, 2024 after 16 days of proceedings (Tr. pp. 1-2181). In a decision dated April 11, 2025, the IHO found that the district failed to offer the student a FAPE for both the 2020-21 and 2021-22 school years, that SINAI at TABC was an appropriate unilateral placement, and that equitable considerations warranted full funding and reimbursement of the cost of the student's tuition (IHO Decision at pp. 25-27).

The majority of the IHO's decision recited the findings of fact from the hearing record (IHO Decision at pp. 1-23). The IHO stated that the student was "capable of learning" even though he had low scores on cognitive testing, but the district failed to challenge the student, and he did not make progress (id. at p. 26). The IHO discussed goals and objectives from the 2016-17 and 2018-19 school years in which the student did not achieve certain goals, but that the district "continued to offer essentially the same program over and over again" (id.). In addition, the IHO found that the district failed to explain why it continued to recommend the same program when the student "did not make meaningful educational progress in the 12:1+4 [special] class[] he was in for several years in the PAVE program" (id.). The IHO found that the district did not consider a class size smaller than the 12:1+4 or additional supports "which may have allowed progress consistent with his abilities" (id.).

Next, the IHO held that because the student repeated eighth grade it suggested that the district "knew [the] [s]tudent was not making reasonable educational progress, yet it continued to do nothing" (IHO Decision at p. 26). Again, the IHO found no "cogent explanation" in recommending the 12:1+4 special class or how the recommended program would allow the student to make "meaningful educational progress" (id.). Further, the IHO held that the district knew that while at SINAI at TABC during the 2020-21 school year the student was in a small class of (six students or fewer than six) students but continued to not recommend a smaller class size or other supports and continued to recommend the 12:1+4 special class (id.). Moreover, the IHO found that the CSE had a private neuropsychological evaluation that recommended "a small, highly

⁵ The hearing record does not contain an order of consolidation of the January 27, 2022, and November 7, 2022 due process complaint notices; however, in its amended request for review, the district asserted that both were consolidated and furthermore, the IHO decided the issues raised in both complaints in her April 11, 2025 decision (IHO Decision at pp. 25, 27).

structured classroom" but "did nothing with that knowledge" and failed to incorporate the recommendations of the private neuropsychological evaluation into the IEPs (id. at pp. 26-27).

The IHO then found that SINAI at TABC was appropriate as it provided the student with small classes with no more than six students except one class with eight students, low student teacher ratios, lunch with "neurotypical peers," and vocational training (IHO Decision at p. 27). Furthermore, the IHO found that the program at SINAI at TABC had in place "most" of the recommendations made by the private neuropsychologist (id.). In connection with the religious instruction provided to the student at SINAI at TABC, the IHO opined that the district was not prohibited from reimbursing parents for the costs of a program that had religious components (id.). In terms of equitable considerations, the IHO found that the parents participated in all of the student's CSE meetings and provided notice of their intent to unilaterally place the student at SINAI at TABC all of which supported an award of full funding/reimbursement (id.).

Accordingly, the IHO ordered the district to reimburse the parents for the amounts they paid to SINAI at TABC for the 2020-21 and 2021-22 school years and to either reimburse SINAI at TABC directly or through the parents, the balance owed for the tuition at SINAI at TABC for the 2020-21 and 2021-22 school years (IHO Decision at p. 27).

IV. Appeal for State-Level Review

In an amended request for review, the district appeals alleging that the IHO erred in finding that it denied the student a FAPE for the 2020-21 and 2021-22 school years and ordered tuition reimbursement/direct funding for SINAI at TABC for both school years.⁶ The district contends that the "hearing record as a whole" demonstrated the student's progress including toward annual goals and the student's progress during prior school years such that continuing similar program recommendations for the 2020-21 and 2021-22 school years was appropriate (Req. for Rev. ¶ 3). In connection with both the 2020-21 and 2021-22 school years, the district argues that the CSE considered sufficient evaluative information all of which was considered in the development of the present levels of performance. The district asserts that the recommendation to continue enrollment in the BOCES PAVE program was based upon the parents' request for "academically rigorous classes" as well as the student's past progress in the BOCES PAVE program (id. ¶¶ 10, 13). Next, the district argues that SINAI at TABC was not an appropriate unilateral placement as determined by the IHO because the evidence in the hearing record provided general information about the program with no specific information as to how SINAI at TABC addressed the student's unique needs. Lastly, the district argues that equitable considerations did not favor the parents.

In an answer, the parents generally deny the material allegations contained in the request for review. At the outset, the parents argue that the district failed to timely serve the request for review. Next, the parents argue that the request for review exceeded the page limitations by using "extensive footnotes" as prohibited by the State regulations and all allegations and arguments contained therein should not be considered on appeal (Answer ¶ 13). The parents then seek to

⁶ The district served a notice of request for review, request for review, and memorandum of law upon the parent on May 21, 2025, which were filed with this office on May 27, 2025, but later rejected on May 27, 2025 for failure to correctly identify the IHO case being appealed. The district was granted leave to complete service of amended papers upon the parent with a specific deadline (see SRO Ex. 5).

uphold the IHO's finding that the district denied the student a FAPE for the 2020-21 and 2021-22 school years, that SINAI at TABC was appropriate to meet the student's needs, and that equitable considerations warrant an award of full funding/reimbursement for the cost of the student's tuition.⁷

V. Discussion

As a threshold matter, it must be determined whether the district's appeal should be dismissed for failure to comply with State regulations governing appeals before the Office of State 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 notice of request for review and a verified request for review and other supporting documents, if any, upon a 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 and 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

⁷ The parents request the introduction of additional evidence as follows: proposed exhibit 1: affidavit of the student's father; proposed exhibit 2: affidavit of parents' counsel; proposed exhibit 3: affidavit of associate from parents' law firm; proposed exhibit 4: affidavit of the student's mother; proposed exhibit 5: May 27, 2025 letter from the Office of State Review (OSR); proposed exhibit 6: email from district's counsel to parents' counsel dated June 9, 2025; proposed exhibit 7: June 10, 2025 letter from district's counsel to OSR; and proposed exhibit 8: June 24, 2025 letter from district's counsel to OSR. Generally, documentary evidence not presented at an impartial hearing may be considered in an appeal from an impartial hearing officer's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (*see, e.g., Application of a Student with a Disability*, Appeal No. 08-030; *Application of the Dep't of Educ.*, Appeal No. 08-024; *Application of a Student with a Disability*, Appeal No. 08-003; *Application of the Bd. of Educ.*, Appeal No. 06-044; *Application of the Bd. of Educ.*, Appeal No. 06-040; *Application of a Child with a Disability*, Appeal No. 05-080; *Application of a Child with a Disability*, Appeal No. 05-068; *Application of the Bd. of Educ.*, Appeal No. 04-068). In an exercise of my discretion, I will consider the additional documentary evidence submitted by the parents, with the exceptions of proposed exhibits 5-8. What the parents submitted as proposed exhibit 7 included only three pages (the district's June 10, 2025 cover letter and an affidavit) of a 47-page submission filed with OSR on June 10, 2025. The parents' proposed exhibit 7 is incomplete and the 47-page submission will be cited instead as "June 10, 2025 Dist. Corr. at pp. 1-47". In addition, the documents submitted by the parents as proposed exhibits 6 and 8 are incomplete. The correspondence submitted to OSR on June 24, 2025 consisted of five pages and included both of the parents' proposed documents in context. The district's June 24, 2025 submission will be cited as "June 24, 2025 Dist. Corr. at pp. 1-5". Lastly, proposed exhibit 5 is a copy of the May 27, 2025 letter sent from OSR. The copy submitted by the parents has been marked and is also duplicative. The letter will be cited as "May 27, 2025 OSR Corr.". The parents' additional evidence that has been accepted will be denoted as "SRO Exs. 1-4" respectively.

the Office of State Review . . . within two days after service of the request for review is complete" (8 NYCRR 279.4[e]).

In addition, a request for review must be personally served within 40 days after the date of the IHO's decision to be reviewed (id.). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11[b]). State regulation provides an SRO with the authority to dismiss sua sponte an untimely request for review (8 NYCRR 279.13; see e.g., Application of the Board of Educ., Appeal No. 17-100 [dismissing a district's appeal for failure to timely effectuate personal service on the parent]; Application of a Student with a Disability, Appeal No. 16-014 [dismissing a parent's appeal for failure to effectuate service in a timely manner]; see also 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 May 27, 2025, the district filed the following documents with OSR: a notice of intention to seek review and case information statement dated May 2, 2025, and bearing IHO case number 569335, an affidavit of service of the notice of intention to seek review indicating that service was effectuated on May 5, 2025, a notice of request for review dated May 19, 2025, a request for review dated May 19, 2025, and bearing IHO case number 536539, a memorandum of law dated May 19, 2025, and bearing IHO case number 536539, an affidavit of verification from the assistant superintendent for pupil personnel services sworn to on May 19, 2025, and an affidavit of service sworn to on May 23, 2025, which indicated that personal service was effectuated on the student's father on May 21, 2025.

In correspondence from OSR dated May 27, 2025, the district's counsel was advised that the documents served upon the parent and filed with OSR referenced two different IHO case numbers (May 27, 2025 OSR Corr. at p. 1). As a result, the district's counsel was further notified that the documents filed on May 27, 2025 were rejected (id.). However, the district's counsel was granted leave to reserve and file an amended request for review with supporting papers (id.).⁸ The May 27, 2025 letter further advised that the amended request for review together with all supporting papers was required to be served and filed with OSR "no later than June 10, 2025 at 4:30PM" (id. [emphasis in original]). Finally, the May 27, 2025 letter advised that if the amended request for review was not served upon the parents and filed with OSR by the stated deadline that the district would "be deemed to have abandoned the appeal" and the file would "be administratively closed" (id.).

In correspondence dated June 10, 2025, the district's counsel submitted an amended notice of request for review dated June 6, 2025, an amended request for review dated June 6, 2025, a memorandum of law "in response to the directive of [OSR]," dated June 6, 2025, an affidavit of verification from the assistant superintendent for pupil personnel services sworn to on June 6, 2025, and an "[affidavit of non-service]" (June 10, 2025 Dist. Corr. at pp. 1-47).⁹ According to counsel for the district, efforts were made to personally serve the parents, however the process server believed that the parents were "attempting to evade service" and that parents' counsel refused to accept service of the pleadings on the parents' behalf (id. at pp. 1-2).

According to the process server's affidavit—which accompanied the June 10, 2025 correspondence and filings—he first attempted service on June 9, 2025 at 6:48 p.m. and again on June 10, 2025 at 10:24 a.m. For the two attempts on June 9, 2025, and on June 10, 2025, the description of the parents' residence by the process server reflects that no one was home (June 10, 2025 Dist. Corr. at p. 47).

For the first time, the process server also noted that when making personal service on the student's father of the defective request for review from May 21, 2025, however he characterized his single interaction with the student's father as "consistently attempt[ing] to evade service" (June 10, 2025 Dist. Corr. at p. 47). Specifically, the process server averred that "[i]n those attempts [sic]" the student's father "consistently attempted to evade service" in that the process server encountered a teenage boy and advised him that he had a delivery for the student's father (id.). The teenage boy stated that the student's father "was inside and he would come get him" (id.). The process server waited approximately 10 minutes and then knocked on the door and waited an additional five minutes (id.). The process server then stated that he left the documents at the door and returned to his vehicle, at which time, the student's father "exited the house[,] retrieved the papers[,] and then argued with [him], including threaten[ing] legal action (trespassing) against [him] as the process server, indicating a strong desire to avoid interaction and service" (id.).

Based on the account of the process server in his "affidavit of non-service," the district's counsel's June 10, 2025 letter included a request for alternate service of the amended request for

⁸ The correct IHO case number is 569335.

⁹ There is no indication on the cover letter that the parents' counsel was copied on the letter or provided with the documents (June 10, 2025 Dist. Corr. at p. 2).

review and supporting documentation on the parents by overnight mail (June 10, 2025 Dist. Corr. at p. 2).¹⁰ According to the e-Filing system records of the OSR, the district's counsel electronically filed the response letter, amended pleadings and supporting documents and a letter-request for alternate service at 4:14 p.m. on June 10, 2025, 16 minutes before the deadline set forth in the May 27, 2025 correspondence, but there was no request for an extension of the deadline.¹¹

By letter dated June 10, 2025, and on behalf of the undersigned SRO, the district's counsel's request for alternate service was granted (June 10, 2025 OSR Corr.). Specifically, the district was permitted to effectuate service by alternative means, which consisted of service on the parents "by mailing the request for review, any supporting papers, and a copy of this letter to the [parents'] last known address by **Certified Mail, Return Receipt Requested**" (*id.* [emphasis in original]). Further, the district was directed to file an affidavit of service reflecting completion of the alternate service and to provide "a courtesy copy" of the June 10, 2025 letter from OSR, and the request for review and supporting papers to parents' counsel by first class mail (*id.*). Lastly, the district's counsel was directed to file "proof of all attempts at service, failed and successful, including proof of certified mailings" (*id.* [emphasis in original]).

On June 12, 2025, in response to the letter granting alternate service, counsel for the district resubmitted all of the documents provided on June 10, 2025 to OSR, including the previously submitted affidavit of non-service, and stated that a courtesy copy was also provided by email and first class mail to the parents' counsel (June 12, 2025 Dist. Corr.).¹²

Included with the answer in this matter are affidavits from the parents and their attorneys, in which they dispute the account of the process server in his affidavit of non-service. In a sworn affidavit, the student's father confirmed that the address which the process server had previously described was his address and described that his vehicle was usually parked in the driveway in an area that was not always visible from the street (SRO Ex. 1 ¶ 3). The father recounted that on June 9, 2025 he was home until 3:00 p.m., he then left his house and returned by 3:20 p.m. (*id.* ¶ 7). His vehicle was parked in the area of the driveway where it cannot be seen from the street (*id.*). The father averred that he left the house at 3:30 p.m. on June 9, 2025 to attend a baseball game in Philadelphia (*id.*). He stated that no attempt was made to serve him at his house on June 9, 2025

¹⁰ Exceptions to the general rule requiring personal service on a parent include the following: (1) if personal service on the parent cannot be made after diligent attempts, a district may effectuate service by delivering and leaving the request for review at the parent's residence with some person of suitable age and discretion between six o'clock in the morning and nine o'clock in the evening and mailing the same by certified mail, or as otherwise directed by an SRO (8 NYCRR 279.4[c]); or (2) the parties may agree to waive personal service (*see, e.g., Application of the Dep't of Educ.*, Appeal No. 08-056; *Application of the Dep't of Educ.*, Appeal No. 07-037). State regulation provides that a petitioner shall file proof of service of the notice of intention to seek review and of the request for review with OSR (8 NYCRR 279.4[d]). Proof of service should consist of a sworn statement describing what papers were delivered and where, when, how, and to whom the papers were delivered (*see Application of a Student with a Disability*, Appeal No. 24-097).

¹¹ A copy of the form submission, noting its creation at 16:14 on June 10, 2024 has been added to the administrative record.

¹² The district's cover letter is dated June 10, 2025, however it was not filed with OSR until June 12, 2025. To avoid confusion with the district's filings on June 10, 2025, the district's subsequent filings will be cited as "June 12, 2025 Dist. Corr."

(id. ¶ 8). In connection with June 10, 2025, the father stated that other than from 8:30 a.m. to 8:50 a.m., he was home and more particularly he was home at 10:24 a.m., with his car parked in the driveway where it was not visible from the street (id. ¶ 9). He stated that no one knocked at the door or attempted to serve any documents (id.). He further stated that the doorbell was not working but even if someone knocked on the door and he did not hear it, his two dogs would have alerted him to someone's presence at the door (id.).

The parents' counsel also submitted an affidavit in which she denied that the district's counsel requested her consent to accept service of the pleadings on behalf of the parents on June 6, 2025 (SRO Ex. 2 ¶ 2). On June 9, 2025 at 12:33 p.m., counsel for the parents stated that she received an email from a legal secretary at the district's attorney's office explaining that the amended request for review and memorandum of law was sent through a "secure mail system" and requested consent to accept service on her clients' behalf (id. ¶ 3; see June 24, 2025 Dist. Corr. at p. 5). Parents' counsel stated she was unable to respond to the email due to other commitments throughout the day (SRO Ex. 2 ¶ 4). Parents' counsel stated that she did seek consent to accept service of the pleadings from her clients but did not receive a response from them (id. ¶ 6). Another attorney with parents' counsel's office also received the email seeking consent to accept service of the pleadings electronically (SRO Ex. 3 ¶ 2). She was also unable to speak with the parents and notified the district's counsel and legal secretary that she did not speak with her clients (id. ¶ 3). There was no response to that email (id.).

The student's mother also submitted an affidavit with the answer stating that on June 9, 2025 she was at work from 7:30 a.m. to 6:30 p.m. and was unavailable to be reached by telephone, email, or text (SRO Ex. 4 ¶ 2). The mother stated that she arrived home on June 9, 2025 at 7:15 p.m. and there was no attempt to serve papers upon her or her husband (id. ¶ 3). As for June 10, 2025, the mother stated in her affidavit that she worked from 7:30 a.m. to 5:30 p.m. and upon arrival at home at 6:30 p.m. no one attempted to serve papers on her (id. ¶¶ 4-5).

In correspondence dated June 24, 2025, the district's counsel stated that the parents "were served the Amended Request for Review package on June 11, 2025" (June 24, 2025 Dist. Corr. at p. 2). The district did not interpose a reply to the parents' answer.

An SRO may, in his or her sole discretion, excuse a failure to timely seek review within the 40-day timeline specified for good cause shown (8 NYCRR 279.13). State regulation requires that the reasons for the failure must be set forth in the request for review (id.). "Good cause for late filing would be something like postal service error, or, in other words, an event that the filing party had no control over" (Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *5 [N.D.N.Y. Dec. 19, 2006]; see T.W. v. Spencerport Cent. Sch. Dist., 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012] [finding that "attorney error or computer difficulties do not comprise good cause"]). The initial papers in this matter were defective but the district was granted a two week reprieve. The district's counsel's decision to wait until the last few moments before the revised deadline to file a request seeking alternate service was not reasonable. In its numerous missives to OSR, the district's attorney has not offered good cause or any explanation as to why he waited to communicate with OSR until 4:14 p.m. on June 10, 2025, when the deadline expired at 4:30 p.m. Further, there was no explanation or justification for the delay in seeking consent to accept service from the parents' counsel until June 9, 2025.

Moreover, given the process server's account of his successful service on the student's father on May 21, 2025 as evasive and contentious, the undersigned is hard-pressed to understand why the district would wait until one day before the deadline of June 10, 2025 to begin to attempt service on the parents of the amended pleadings. There also was no explanation offered as to why the service of the pleadings by certified mail was not effectuated until June 11, 2025, after the deadline to serve and file had expired. Despite numerous other correspondence with OSR, the district did not request and was not granted an extension of time to serve and file an amended request for review. On June 24, 2025, the district wrote to OSR to object to the parents' request for an extension of time to serve and file the answer (June 24, 2025 Dist. Corr. at pp. 1-2). Notably, in failing to serve and file a formal responsive pleading, namely a reply to the parents' answer, the statements in the affidavits provided in support of the answer by the parents and their counsels remain unrefuted.¹³

Based on the foregoing, the parents correctly assert that the district failed to properly initiate its appeal. The district failed to serve the amended request for review and supporting documents by no later than June 10, 2025 at 4:30 p.m., failed to offer any good cause, and failed to request an extension of time to serve an amended request for review.

In this case, because the district failed to properly initiate this appeal by effectuating timely service upon the parents, and there is no good cause asserted in the district's amended request for review, in an exercise of my discretion, the appeal is dismissed (8 NYCRR 279.13; see Avaras v. Clarkstown Cent. Sch. Dist., 2019 WL 4600870, at *11 [S.D.N.Y. Sept. 21, 2019] [upholding SRO's decision to dismiss request for review as untimely for being served nine hours late notwithstanding proffered reason of process server's error]; New York City Dep't of Educ. v. S.H., 2014 WL 572583, at *5-*7 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late]; B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-67 [S.D.N.Y. 2013]; T.W., 891 F. Supp. 2d at 440-41; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at *4-*5 [Sept. 25, 2009] [upholding dismissal of a petition served three days late]; Keramaty v. Arlington Cent. Sch. Dist., 05-CV-0006, at *39-*41 [S.D.N.Y. Jan. 25, 2006] [upholding dismissal of a petition served one day late], adopted [S.D.N.Y. Feb. 28, 2006]; Application of a Student with a Disability, Appeal No. 18-046 [dismissing request for review for being served one day late]).

VII. Conclusion

The parent correctly argues that the district was untimely in completing service of the amended request for review. Having exercised my discretion to dismiss the amended request for review due to the district's failure to timely initiate the appeal through service on the parents, the necessary inquiry is at an end.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**

¹³ Counsel for the district has been cautioned to use formal pleadings and not to attempt to litigate appeals informally through letters (Application of a Student with a Disability, Appeal No. 25-333).

August 29, 2025

**JUSTYN P. BATES
STATE REVIEW OFFICER**