The University of the State of New York

The State Education Department
State Review Officer
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No. 25-563

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

Appearances:
Law Office of Nora A. Lynch, attorneys for petitioner, by Nora A. Lynch, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which dismissed her claims pertaining to the 2022-23 school year as time barred. 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, therefore, the student's educational history, the procedural history of the case, and the IHO's decision will not be recited in detail. At all relevant times, the student was eligible for special education as a student with a learning disability (see Dist. Exs. 2 at pp. 1, 25; 4 at pp. 1, 32; 5 at p. 1; 8 at p. 1).[1]

On March 2, 2022, a CSE convened for a meeting and developed an IEP with a projected implementation date of March 16, 2022 (Dist. Ex. 4 at pp. 1, 32). The March 2022 CSE recommended a 12-month program consisting of placement in a 12:1+1 special class at a district specialized school, related services, and testing accommodations (Dist. Ex. 4 at pp. 25-27, 29-30; 5 at p. 1). As for related services, the CSE recommended that the student receive three 40-minute sessions per week of speech-language therapy in a group setting; one 40-minute session per week

[1] The student's eligibility for special education as a student with a learning disability is not in dispute (see 34 CFR 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

of occupational therapy (OT) in a group setting; one 40-minute session per week of individual counseling; and one 40-minute session per week of group counseling (Dist. Ex. 4 at p. 25).

On April 18, 2022, the district issued a prior written notice, memorializing the recommendations of the March 2022 CSE and the other placement options considered (compare Dist. Ex. 4 at pp. 25-26, 32, with Dist. Ex. 5 at p. 1).[2]

On May 4, 2022, the parent signed an enrollment contract, under which the student would attend the Cooke School and Institute (the Cooke School) for the summer 2022 session and the 10-month 2022-23 school year (Parent Ex. J at pp. 1, 3).[3] Under the contract's terms, the parent would be obligated to pay the student's full tuition, in the amount of $98,725.00, but could delay such payment while seeking funding from the district (id. at pp. 1-2).

In a letter dated June 20, 2022, the parent, through her attorney, informed the district of her intention to enroll the student at the Cooke School for the 2022-23 school year and seek funding from the district for the cost of the student's tuition (Parent Ex. C at pp. 1-2). The June 2022 letter expressed disagreement with the recommendations of the March 2022 CSE and stated that the district "ha[d] yet to provide . . . a placement capable of implementing the March 2, 2022 IEP" (id.).

On June 27, 2022, the district issued a school location letter, identifying the public-school site to which the student was assigned to receive the recommended special education programming (Dist. Ex. 7 at p. 1).

From July 5, 2022 through August 12, 2022, the student attended the Cooke School's summer program which included speech-language therapy, OT, and counseling (see Parent Exs. H; L at pp. 1, 4-5; Q). From September 12, 2022 through June 16, 2023, the student attended ninth grade at the Cooke School, where she continued receiving speech-language therapy, OT, and counseling (see Parent Exs. J at p. 1; L at p. 1; M at pp. 1-2, 4-5).

On February 28, 2023, a CSE convened for a meeting and developed an IEP with a projected implementation date of March 14, 2023 (Dist. Ex. 2 at pp. 1, 25). The February 2023 CSE recommended a 12-month program consisting of placement in a 12:1+1 special class at a district specialized school, related services, and testing accommodations (Dist. Ex. 2 at pp. 17-20; 22; 8 at p. 1). As for related services, the CSE recommended that the student receive three 45-minute sessions per week of speech-language therapy in a group setting; one 45-minute session per week of OT in a group setting; one 45-minute session per week of individual counseling; and one 45-minute session per week of group counseling (Dist. Ex. 2 at p. 18).

On April 5, 2023, the parent signed an enrollment contract, under which the student would attend the Cooke School for the summer 2023 session and the 10-month 2023-24 school year

[2] Although the March 2022 IEP indicated an implementation date of March 16, 2022, the April 18, 2022 prior written notice indicated services would be "put into effect" on May 10, 2022 (Dist. Ex. 5).

[3] The Cooke School is a nonpublic school serving students with cognitive, adaptive, social, and academic deficits (see Parent Ex. I at p. 1). Cooke has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

(Parent Ex. K at pp. 1, 3). Under the contract's terms, the parent would be obligated to pay the student's full tuition, in the amount of $104,650.00, but could delay such payment while seeking funding from the district (id. at pp. 1-2).

In a letter dated June 21, 2023, the parent, through her attorney, informed the district of her intention to, once again, enroll the student at the Cooke School for the 2023-24 school year and seek funding from the district for the cost of the student's tuition (Parent Ex. D at pp. 1-2). The June 2022 letter expressed disagreement with the recommendations of the February 2023 CSE and stated that the district "ha[d] yet to provide . . . a placement capable of implementing the February 28, 2023 IEP" (id.).

On July 20, 2023, the district issued a prior written notice, memorializing the recommendations of the February 2023 CSE and the other placement options considered (compare Dist. Ex. 2 at pp. 17-20, 25, with Dist. Ex. 8 at p. 1).[4]

On August 21, 2023, the district issued a school location letter, identifying the public-school site to which the student was assigned to receive the recommended special education programming (Dist. Ex. 10 at p. 1).

From July 5, 2023 through August 11, 2023, the student attended the Cooke School's summer program which included speech-language therapy, OT, and counseling (see Parent Exs. H; L at pp. 1, 4-5; R). From September 11, 2023 through June 14, 2023, the student attended 10th grade at the Cooke School, where she continued receiving speech-language therapy, OT, and counseling (see Parent Exs. J at p. 1; N at pp. 1, 4-5; O at p. 1; P).

A. Due Process Complaint Notice and Subsequent Events

In a due process complaint notice dated September 9, 2024, the parent alleged that, with regard to the 2022-23 and 2023-24 school years, the district denied the student a free appropriate public education (FAPE) under the IDEA, violated section 504 of the Rehabilitation Act, and violated the Americans with Disabilities Act (ADA) (Parent Ex. B at pp. 1-2, 5-6). As for the 2022-23 school year, the parent alleged that the district "failed to comprehensively evaluate [the student] in all areas of suspected disability;" relied on outdated and insufficient evaluative information in developing the March 2022 IEP; predetermined the student's educational program; recommended a placement that was inappropriate for the student; and assigned the student to a school that was incapable of implementing her IEP (id. at pp. 4-5). As for the 2023-24 school year, the parent alleged that the district "failed to comprehensively evaluate [the student] in all areas of suspected disability;" relied on outdated and insufficient evaluative information in developing the February 2023 IEP; predetermined the student's educational program; recommended a placement that was inappropriate for the student; and failed to provide a public-school assignment until after the start of the 12-month school year (id.). The parent invoked pendency based on a prior, unappealed IHO decision, dated September 17, 2022 (id. at p. 6). As relief, the parent requested an order directing the district to "fund [the student's] placement at the Cooke School for the 2022-2023 and 2023-2024 school years;" "provide [the student] with

[4] Although the February 2023 IEP indicated an implementation date of March 14, 2023, the July 20, 2023 prior written notice indicated services would be "put into effect" on June 27, 2023 (Dist. Ex. 8).

appropriate bus transportation between her home and [the] Cooke [School] for the 2022-2023 and 2023-2024 school years[;] and reimburse the parent for any transportation expenses that arise due to the [district's] failure to provide appropriate transportation" (id.).

B. Impartial Hearing and Impartial Hearing Officer Decision

An IHO with the Office of Administrative Trials and Hearings (OATH) was appointed to preside over the matter; and a pre-hearing conference took place on December 17, 2024 (see Tr. pp. 1-16).

In a motion dated January 3, 2025, the district requested dismissal of the "claims concerning the 2022-23 school year as time barred under the applicable statute of limitations" (IHO Ex. III at pp. 1, 4, 8-9). The parent submitted a response, opposing the district's motion (IHO Ex. VI at pp. 1, 4-5).

An impartial hearing convened on March 27, 2025 and concluded the same day (see Tr. pp. 17-127). The parent offered various exhibits, most of which the IHO admitted into evidence (see Tr. at pp. 40-42, 46-47; Parent Exs. A-D; H-S; Y; Z).[5, 6] The parent's exhibits included testimony by affidavit from an administrator at the Cooke School and the parent herself, both of whom appeared for cross-examination during the hearing (see Tr. at pp. 79-116; Parent Exs. Y; Z). The district presented no testimony but offered various exhibits, all but one of which the IHO admitted into evidence (see Tr. at pp. 48-49; District Exs. 1-14).[7, 8]

During the March 2025 proceedings, the IHO granted the district's motion to dismiss the parent's claims related to the 2022-23 school year on the record, after hearing additional argument from the parties (see Tr. pp. 50-73). The district then conceded that it did not offer the student a FAPE for the 2023-24 school year and requested that the IHO find the parent had the burden of demonstrating the appropriateness of the nonpublic school (Tr. p. 73).

In a decision dated July 22, 2025, the IHO first explained that the parent's claims pertaining to the 2022-23 school year were barred by the IDEA's two-year statute of limitations (IHO Decision at pp. 3, 5). The IHO reasoned that the parent's claims were based on an IEP created on March 2, 2022, a prior written notice issued on April 18, 2022, and a school location letter issued on June 27, 2022; and, based on the record, the parent knew or should have known of the basis for her claims in April 2022 (id. at p. 3). The IHO further reasoned that, even if the parent's claims

[5] Parent Exhibit A through D, H through S, Y, and Z were admitted into evidence (Tr. pp. 46-47). The IHO excluded proposed Parent Exhibits E through G, T through W, and AA through DD (Tr. pp 40-42, 46). Proposed Parent Exhibit X was initially admitted but later stricken from the record because the parent's counsel failed to previously disclose that exhibit (Tr. pp. 46-47).

[6] Proposed Parent Exhibits V, W, and AA through DD were filed with the Office of State Review even though they were excluded from the hearing record (Tr. pp. 42, 46).

[7] The IHO excluded District Exhibit 15 as duplicative of Parent Exhibit A (Tr. pp. 48-49).

[8] Proposed District Exhibit 15 was filed with the Office of State Review even though it was excluded from the hearing record (Tr. pp. 48-49).

did not accrue until the first day of school, the first day of school for 12-month students was on or about July 5, 2022 (id. at pp. 3-4). Thus, according to the IHO, the parent needed to file her due process complaint notice by July 5, 2024, at the latest (id. at p. 4).

The IHO explained that the exceptions to the two-year statute of limitations were inapplicable (IHO Decision at p. 4). According to the IHO, although the parent alleged that the district misled her to believe that IHO case number 267857, a prior case concerning the same school years, would settle, the exception for "'specific misrepresentation[s]' by the district" contemplates "misstatements and misrepresentations made during the time of the alleged FAPE denial [which], in this case[, was] during the March 2022 [CSE] meeting" (id.).

The IHO noted that she dismissed the parent's due process complaint notice in IHO case number 272528, yet another case arising from the same school years and the same set of facts, because the "parties[] repeated[ly] fail[ed] to communicate and adhere to deadlines" (IHO Decision at p. 4 n.6). The IHO further noted that parent's counsel blamed a clerical error by the district "for her failure to respond to IHO communications;" that the parent "filed an appeal with the Office of State Review . . . , even though the IHO dismissed case number 272528 without prejudice;" and that the parent initiated the instant case, which is identified by IHO case number 285824, "during the review period for [case] number []272528" (id. at p. 4).[9]

As for the 2023-24 school year, the IHO found that the district denied the student a FAPE by failing to secure updated evaluative data and using outdated data to develop the student's IEP (IHO Decision at pp. 9-11). The IHO also found that the Cooke School was an appropriate unilateral placement for the student and that equitable considerations favored the parent's request for full tuition recovery (id. at pp. 12-13). Accordingly, the IHO ordered the district to "directly fund the [s]tudent's tuition for the . . . [2023-24 school year];" "evaluate [the] [s]tudent in all areas of suspected disability;" and "convene a CSE to incorporate the findings from those evaluations" into a new IEP for the student (id. at pp. 13-14).

IV. Appeal for State-Level Review

The parent appeals, alleging that the IHO erred in dismissing the case identified by IHO case number 272528 without good cause and excluding evidence concerning the 2022-23 school year in the instant proceeding, which is identified by IHO case number 285824.[10] The parent asks that an SRO vacate the order dismissing IHO case number 272528; undertake a de novo review of IHO case numbers 272528 and 285824; determine that the district denied the student a FAPE for

[9] The parent's appeal of the decision in IHO case number 272528 was denied on December 5, 2024 in Application of a Disability, Appeal No. 24-458, upholding the IHO's dismissal of that matter without prejudice (IHO Ex. II).

[10] Neither party has appealed the IHO's finding that the district denied the student a FAPE for the 2023-24 school year. Nor has either party appealed the IHO's findings that the Cooke School was an appropriate unilateral placement for the student and that equitable considerations favored the parent's request for relief. Accordingly, those findings have become final and binding on the parties and will not be reviewed on appeal (34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; see M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, at *6-*7, *10 [S.D.N.Y. Mar. 21, 2013]).

the 2022-23 school year; and award the parent full funding of the student's placement at the Cooke School for the 2022-23 school year.

In her request for review, the parent asserts that she "promptly refiled the matter" after withdrawing her due process complaint notice in IHO case number 267857, the first case concerning the 2022-23 and 2023-24 school years, based on assurance from the district's counsel that a settlement offer for both school years would be forthcoming. As for her second case concerning the 2022-23 and 2023-24 school years, the case identified by IHO case number 272528, the parent asserts that an attorney for the district mistakenly excluded the IHO from an email concerning a scheduled appearance and that the IHO "fail[ed] to consider the principles of equity, fairness, and economy" in dismissing the case. Thus, according to the parent, the two-year limitations period should not apply.

The parent also contends that the IHO erroneously determined the date on which her claims pertaining to the 2022-23 school year accrued. According to the parent, the IHO "failed to adequately consider or investigate" the date on which the parent knew or should have known of the basis for such claims, which may have accrued in summer 2022, when the parent visited the assigned school and learned that it could not offer a class capable of implementing the subject IEP.

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 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]).[11]

[11] 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).

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 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

A. Compliance with Form

As a threshold matter, I must determine whether the parent's request for review should be dismissed for noncompliance with the State regulations governing appeals before the Office of State Review.

Part 279 of the State regulations requires that an appeal from an IHO's decision be initiated by timely personal service of a notice of intention to seek review, followed by timely personal service of a notice of request for review, verified request for review, and other supporting documents, upon the respondent (see 8 NYCRR 279.2[a], 279.4[a]). The petitioner shall personally serve the opposing party with a notice of intention to seek review within 25 days after the date of the IHO's decision to be reviewed (8 NYCRR 279.2[a]-[b]).[12] Thereafter, the petitioner "shall personally serve a notice of request for review and a request for review upon the" respondent "within 40 days after the date of the" IHO's decision (8 NYCRR 279.4[a]). The petitioner shall then "file the notice of intention to seek review, notice of request for review, request for review, and proof of service with the Office of State Review . . . within two days after service of the request for review is complete" (8 NYCRR 279.4[e]).

"Where the petitioner is a party other than the [school district], the [district] shall file the completed and certified record with the Office of State Review within 10 days after service of the notice of intention to seek review" (8 NYCRR 279.9[b]). "Where the [district] is the petitioner,

[12] The practice regulations envision an efficient process by which a notice of intention to seek review is served upon the respondent approximately 10 days before a request for review is served (but not later than 25 days after the date of the IHO decision). 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).

[the] [district] shall file the record before the [IHO] together with the request for review" (8 NYCRR 279.9[c]).

The practice regulations require verification of all pleadings submitted to an SRO in connection with an appeal (8 NYCRR 279.7[b]). When the appeal is taken by the student's parent or parents, "[t]he request for review shall be verified by the oath of at least one" such petitioner (id.). Verification of a document entails a sworn statement that the affiant knows the contents of the document and knows the contents of the document to be true; or, with respect allegations made "upon information and belief," the affiant believes the allegations to be true (8 NYCRR 279.7[b][1]).

An SRO may, "in his or her sole discretion," reject submitted documents or dismiss a request for review for failure to comply with the practice requirements of Part 279 of the State regulations (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. 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].

On September 3, 2025, the parent filed the following documents with the Office of State Review: a cover letter dated August 29, 2025, a notice of intention to seek review bearing IHO case number 276900; an "updated" notice of intention to seek review bearing IHO case numbers 285824 and 272528; a request for review bearing IHO case numbers 272528 and 283348; email correspondence which purports to demonstrate service of the notices of intention to seek review and request for review on the district; and additional, documentary evidence. Notably, the parent did not file an affidavit/affirmation of verification or an affidavit/affirmation of service.

In a letter dated September 4, 2025, the Office of State Review granted a request from the parent's counsel for an "extension of time from August 29, 2025 to September 12, 2025 to serve and/or file [an] Amended Request for Review in this matter" (Sept. 4, 2025 OSR Corr. at p. 1).[13] The September 2025 letter also advised the parent's counsel that the IHO case number referenced on the parent's original filing did not match the certified record submitted by the district (id.).[14] The letter directed the parent's counsel to confer with the district to "establish the correct IHO Case Number and IHO decision from which the parent is appealing" (id.). The letter further advised the parent's counsel as follows: "[i]f the parent is appealing from a decision other than the decision rendered in IHO Case No. 285824, the parent must re-serve and file a corrected Notice of Intention to Seek Review so that the district has the opportunity to submit the correct hearing record;" but, "[i]f the parent is appealing the decision rendered in IHO Case No. 285824, it is not necessary to re-serve and file a Notice of Intention to Seek Review" (id.). As for the district's response, the September 2025 letter advised that, "[o]nce an amended request for review has been served, [the]

[13] The district's counsel received a copy of the September 2025 letter from the Office of State Review (see Sept. 4, 2025 OSR Corr. at p. 2).

[14] The district submitted a certified record for IHO case number 285824; but the parent's request for review referenced two entirely different case numbers, 272528 and 283348 (compare IHO Decision at p. 1, with Req. for Rev. at p. 1). Moreover, the parent's request for review does not accord with either the original notice of intention to seek review, which referenced IHO case number 276900, or the "updated" notice of intention to seek review, which referenced IHO case numbers 285824 and 272528 (compare Req. for Rev. at p. 1, with Notices of Intention to Seek Rev. at p. 1).

respondent may serve an answer and cross-appeal to the amended request for review in accordance with the timelines set forth in" the practice regulations; but, if the petitioner does not serve and file an amended request for review or seek an additional extension of time, "the respondent may, within five business days after the date on which the amended request for review was due to be served, answer the original request for review" (id. at p. 2).

The parent did not file a corrected notice of intention to seek review or an amended request for review; and the district did not answer the original request for review within the timeline set forth in the practice regulations (see 8 NYCRR 279.5 [a],[e] [providing that the respondent may serve an answer or an answer with cross-appeal "within five business days after the date of service of the request for review"]).

Notwithstanding any confusion as to which decision the parent intended to appeal, the parent failed to initiate this appeal in accordance with the applicable State regulations. Specifically, the request for review is unverified (see 8 NYCRR 279.7[b]); and the parent did not file proof of service conforming to the requirements of an affirmation (see 8 NYCRR 279.4; CPLR 2106; Application of a Student with a Disability, Appeal No. 24-505 [noting that the petitioner had not complied with the Part 279 practice requirements where, among other deficiencies, "the proof of service filed with the request for review d[id] not include language conforming to the requirements of an affirmation"]). Accordingly, in an exercise of my discretion, the request for review is dismissed (see 8 NYCRR 279.8[a]; see, e.g., Application of a Student with a Disability, Appeal No. 24-566 [dismissing the appeal where, among other procedural deficiencies, the request for review was not properly verified]; Application of a Student Suspected of Having a Disability, Appeal No. 24-190 [dismissing the appeal where "the parents failed to file proof of service of their request for review" or rebut "the district's defense of improper service"]; Application of a Student with a Disability, Appeal No. 22-082 [dismissing the appeal where, among other procedural deficiencies, "[t]he parent did not file an affidavit of verification"]; Application of a Student with a Disability, Appeal No. 21-112 [dismissing the appeal where "the parent failed to file an affidavit of service;" and, in any event, "the request for review [wa]s untimely").

B. Alternative Findings – Statute of Limitations

Even if the parent's appeal had not been dismissed for noncompliance with the Part 279 practice requirements, relief is unavailable with regard to the 2022-23 school year. As explained below, the IHO correctly determined that the parent's claims concerning the 2022-23 school year were barred by the applicable statute of limitations.[15]

The IDEA provides that a claim accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint and requires that, unless a state establishes a different limitations period, the party must request a due process hearing within two years of that date (20 U.S.C. § 1415[f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2], 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114-15 & n.8 [2d Cir. 2008]; M.D. v. Southington Bd. of Educ.,

[15] Although the parent protests actions taken by the district and the IHO in other proceedings, the crux of the matter on appeal is whether the IHO erred in dismissing certain claims presented in IHO case number 285824 (see Req. for Rev).

334 F.3d 217, 221-22 [2d Cir. 2003]).[16] Because an IDEA claim accrues when the parent knew or should have known about the claim, "determining whether a particular claim is time-barred is necessarily a fact-specific inquiry" (K.H. v. New York City Dep't of Educ., 2014 WL 3866430, at *16 [E.D.N.Y. Aug. 6, 2014]; see K.C. v. Chappaqua Cent. Sch. Dist., 2018 WL 4757965, at *14 [S.D.N.Y. Sept. 30, 2018] [collecting cases representing different factual scenarios for when a parent may be found to have known or have had reason to know a student was denied a FAPE]). Further, two exceptions to the statute of limitations may apply to the timelines for requesting impartial hearings. The first exception applies if a parent was prevented from filing a due process complaint notice due to the district withholding information from the parent that the district was required to provide under the IDEA (20 U.S.C. § 1415[f][3][D][ii]; 34 CFR 300.511[f][2]; 8 NYCRR 200.5[j][1][i]). A second exception may apply if a parent was prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]).

In this matter, the majority of the parent's claims for the 2022-23 school year pertain to the development of the March 2022 IEP and the program recommendations set forth therein (see Parent Ex. B at pp. 1-5). The March 2022 IEP indicates that the parent participated in the CSE meeting via telephone and that the CSE recorded the parent's input (Dist. Exs. 3; 4 at pp. 6-7, 32). Considering that the parent was present during the March 2022 CSE meeting, the parent knew or should have known of the following alleged denials of a FAPE as of March 2, 2022: the district's failure to comprehensively evaluate the student and its reliance on outdated and insufficient evaluative information; the district's predetermination of the student's educational program; and the inadequacy of the recommended placement (see Parent Ex. B at pp. 1-5; Dist. Exs. 3; 4 at pp. 6-7, 32). Hence, the aforementioned claims accrued more than two years prior to the filing of the parent's September 2024 due process complaint notice (compare Parent Ex. B at p. 1, with Dist. Ex. 4 at p. 32; see, e.g., Application of a Student with a Disability, Appeal No. 24-521 [finding that challenges to the student's April 2021 IEP were "effectively barred by the statute of limitations," as such "claims accrued more than two years prior to the parent's filing of the November 2023 due process complaint notice").

However, the parent also alleged that the assigned public school was incapable of implementing the student's IEP (Parent Ex. B at pp. 4-5). Specifically, the parent alleged and testified via affidavit that, when she contacted "the school to inquire about the availability of a seat in the class recommended at the March 2, 2022 [CSE] meeting" she "was told that . . . the school was unable to offer [the student] a seat" because "the class was already full" (Parent Exs. B at p. 4; Z ¶ 11). The hearing record lacks evidence of the date on which the parent learned that the assigned public school could not offer the student a seat in the recommended class.[17] However, the record evidence establishes that, on May 4, 2022, the parent enrolled the student at the Cooke School (Parent Ex. J at pp. 1, 3); on or about June 20, 2022, the parent notified the district that it

[16] New York State has not explicitly established a different limitations period; rather, it has affirmatively adopted the two-year period found in the IDEA (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j][1][i]).

[17] Acknowledging that attorney argument is not evidence, the request for review asserts that the parent's implementation claim may have accrued in summer 2022, when the parent visited the assigned school and learned that it could not offer "a class capable of implementing the" student's IEP, without specifying the date on which the parent's visit took place (Req. for Rev. at pp. 6-7).

"ha[d] yet to provide . . . a placement capable of implementing the March 2, 2022 IEP" (Parent Ex. C at pp. 1-2); the parent received a school location letter dated June 27, 2022 (see Dist. Ex. 7); the parent spoke with personnel at the assigned public school (see Parent Z ¶ 11); and, beginning on July 5, 2022, the student attended the Cooke School for the 2022-23 school year (see Parent Exs. S; Q). Based on the evidence in the hearing record, the parent should have known that the district had not assigned a school capable of implementing the student's IEP as of July 5, 2022, the first day of school for 12-month students (see Dist. Exs. 4 at p. 26). Consequently, the parent's implementation claim also accrued more than two years prior to the filing of the parent's September 2024 due process complaint notice (see Parent Ex. B at p. 1; cf. Application of a Student with a Disability, Appeal No. 14-089 [finding that "the parent's claims that the assigned public school site could not have implemented the student's IEP . . . accrued when she became aware that the particular school could not implement the IEP" or, "[a]t the very latest, . . . when she sent the notice of unilateral placement").[18]

Turning to the parent's assertion that the two-year statute of limitations should not apply, the IDEA provides that the statute of limitations will not apply if a parent was prevented from filing a due process complaint notice due to the district withholding information that the district was required to provide or due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]).

In order for the "specific misrepresentation" exception to apply, the district must have intentionally misled or knowingly deceived the parent regarding a relevant fact (see D.K. v. Abington Sch. Dist., 696 F.3d 233, 245-46 [3d Cir. 2012]; Sch. Dist. of Philadelphia v. Deborah A., 2009 WL 778321, at *4 [E.D. Pa. Mar. 24, 2009], aff'd 422 Fed. App'x 76 [3d Cir. Apr. 6, 2011]; Evan H. v. Unionville-Chadds Ford Sch. Dist., 2008 WL 4791634, at *6 [E.D. Pa. Nov. 4, 2008]; see also Application of a Student with a Disability, Appeal No. 13-215). In this instance, the parent alleges that she withdrew the case identified by IHO case number 267857, also concerning the 2022-23 school year, because the district misled her to believe that a settlement offer "would be forthcoming" (Req. for Rev. at pp. 2, 5). Regardless of whether the district intentionally misled or knowingly deceived the parent, the "specific misrepresentation" exception is inapplicable, as the parent was not prevented from filing a timely due process complaint notice but, rather, chose to withdraw her due process complaint notice (see Dist. Ex. 15 at pp. 1-5, 10; Req. for Rev. at pp. 2, 5). Thus, "the statute of limitations continued to run as if that [] due process complaint notice had never been filed" (Application of a Child with a Disability, Appeal No. 23-243 [finding that the statute of limitations continued to run where "the parent withdrew her due process complaint notice without a finalized settlement in place"]; see A.B. Dick Co. v. Marr, 197 F.2d 498, 502 [2d Cir. 1952] [finding that a "voluntary dismissal of a suit leaves the situation so far as procedures therein are concerned the same as though the suit had never been brought, thus vitiating and annulling all prior proceedings and orders in the case, and terminating jurisdiction over it for the reason that the case has become moot"] [internal citations omitted]; Long v. Card,

[18] Even if I had not found that the parent's implementation claim was untimely, Second Circuit case law establishes that, if an IEP is rejected before the district has the opportunity to implement it, challenges to the implementation of that IEP are speculative, as the student never attended the recommended placement, and are not a proper basis for a finding that the district denied the student a FAPE (F.L. v. New York City Dep't of Educ., 552 Fed. App'x 2, 9 [2d Cir. 2014]; R.E., 694 F.3d at 195).

882 F. Supp. 1285, 1288-89 [E.D.N.Y. 1995] [finding a claim time-barred after plaintiff's voluntary discontinuance]; see also Hollenberg v. AT&T Corp., 2001 WL 1518271, at *1-*2 [S.D.N.Y. Nov. 28, 2001]).

Moreover, at least one circuit court has held that the inclusion of the two statutory exceptions precludes application of common law equitable tolling principles to save claims otherwise foreclosed by the IDEA statute of limitations (D.K. v. Abington Sch. Dist., 696 F.3d 233, 248 [3d Cir. 2012]). Thus, the parent cannot invoke the circumstances surrounding dismissal of the case identified by IHO case number 272528 to avoid or toll the applicable limitations period (see Application of a Student with a Disability, Appeal No. 20-082 [stating that, "while the parent alleges equitable estoppel or equitable tolling, the IDEA statute of limitations contains only two exceptions"]).[19]

Based on the foregoing, the IHO properly dismissed the parent's claims concerning the 2022-23 school year, and excluded related evidence, as such claims were barred by the IDEA's two-year statute of limitations.

VII. Conclusion

In summary, the parent failed to initiate this appeal in accordance with the applicable State regulations; and, in any event, the requested relief is unavailable, as the underlying claims are time barred. Having exercised my discretion to dismiss the request for review on procedural grounds, I decline to address the parent's submission of additional, documentary evidence for admission and consideration on appeal; and the necessary inquiry is at an end.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
December 4, 2025

CAROL H. HAUGE
STATE REVIEW OFFICER

[19] I note that the "savings" provision of section 205 of New York's Civil Practice Law and Rules, which provides a six-month extension of the statute of limitations to "commence a new action upon the same transaction or occurrence" following certain non-merits dismissals, is also inapplicable in this context (CPLR 205[a]; D.K., 696 F.3d at 248 [stating that "the legislative and regulatory history of the 2004 amendments to the IDEA makes clear that" plaintiffs can escape the statute of limitations only by "application of one of the [IDEA's enumerated] statutory exceptions"]; see generally Westchester Joint Water Works v. Assessor of City of Rye, 27 N.Y.3d 566, 574-76 [2016] [holding that the "recommencement remedy" of CPLR 205[a] was preempted by another statute]).