The University of the State of New York

The State Education Department
State Review Officer
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No. 23-193

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Lewiston-Porter Central School District

Appearances:
Hodgson Russ LLP, attorneys for respondent, by Ryan L. Everhart, 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 the decision of an impartial hearing officer (IHO) which granted respondent's (the district's) motion to dismiss the parent's due process complaint notice. The appeal must be sustained and, for reasons explained more fully below, the matter must be remanded to the IHO for further administrative proceedings.

II. Overview—Administrative Procedures

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

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

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

III. Facts and Procedural History

Given the limited nature of this appeal and the procedural posture of this matter, as well as the parties' familiarity with the student's educational history and the proceedings, the facts and procedural history of the case and the IHO's decision will not be recited here in detail.

Briefly, the parent filed two due process complaint notices on behalf of the student, which are relevant to the issues on appeal, the first dated September 26, 2022, and the second dated May 22, 2023 (see IHO Exs. II-A; II-D).[1] The IHO's dismissal of the May 2023 due process complaint

[1] Attachments to exhibits will be cited by reference to the exhibit followed by the attachment as labeled (e.g.,

notice is the subject of this appeal. For ease of reference, the proceedings that took place to address the September 2022 and May 2023 due process complaint notices will be referenced as "proceeding 1" and "proceeding 2," respectively.

The September 2022 due process complaint notice alleged that the district failed to provide the student a free appropriate public education (FAPE) for the 2022-23 school year by failing to assign staff to deliver 1:1 remote instruction services and occupational therapy (OT) services to the student consistent with an agreement reached during an August 2022 discussion between the district and the parent (IHO Ex. II-A at p. 3). For relief, the parent requested that the district provide the agreed upon services for the remainder of the 2022-23 school year and provide compensatory education (id. at p. 4).

When the parent filed the September 2022 due process complaint notice, she was represented by an attorney (see IHO Ex. II-A at pp. 1, 5).[2] However, via letter to the IHO dated April 11, 2023, the parent's counsel requested to withdraw from her representation of the parent (IHO Ex. II-B). The IHO granted the attorney's request to withdraw and confirmed that he accepted the parent "as appearing pro se" via a letter dated April 17, 2023 addressed to parent and counsel for the district, which also confirmed that the parties held a prehearing conference the same day (IHO Ex. II-F at p. 1). The IHO noted that, during the April 17, 2023 prehearing conference, the district provided him "with a copy of what was termed an 'Interim Settlement Agreement,'" but that "upon inquiry, [the IHO] learned that Parent still had questions regarding certain provisions of the proffered 'Interim Settlement Agreement' and that such had yet to be accepted by Parent" (id. at p. 2). The IHO stated that, once he heard that the parent had not accepted the terms of the proposed settlement agreement, he "thereupon stopped discussion regarding the provisions of that 'Agreement' and directed that [he] would conduct another Pre-Hearing Conference . . . to determine the status of the 'Agreement'" and noted that "[i]f it develops that such 'Agreement' has not been accepted, [he] would then proceed to determine if further negotiations would be productive or whether hearings had to be scheduled" (id.).

On or about May 8, 2023, the parent and the district entered into a partial settlement agreement with the intent of resolving all of the claims contained in the parent's September 2022 due process complaint notice except for her request for compensatory education (IHO Ex. II-C). The settlement agreement included additional language providing that "[a]ll claims which have or could have been raised by the Parent other than her claims for compensatory education services up to the date of this Agreement, are hereby fully and finally settled" (id. ¶ 7). According to the agreement, the district would provide the student with virtual home-based instruction and related

"IHO Ex. II-A" refers to attachment A to IHO exhibit II).

[2] As of the date of the present appeal, several appearances had taken place before the IHO as part of proceeding 1, between October 11, 2022 and May 8, 2023, all of which the IHO refers to as prehearing conferences (see IHO Ex. II-F; SRO Ex. A). The hearing record does not include transcripts of the parties' appearances before the IHO in proceeding 1 but does include written summaries of several of the prehearing conferences (IHO Ex. II-F; see 8 NYCRR 200.5[3][xi] [A transcript or a written summary of the prehearing conference shall be entered into the record by the impartial hearing officer"]). In response to a directive from the undersigned pursuant to 8 NYCRR 279.10(b), the district submitted the remaining summaries of the prehearing conferences that took place as part of proceeding 1, which are collectively cited as "SRO Ex. A."

services for the remainder of the 2022-23 school year and the entire 2023-24 school year (id. ¶ 1). Thereafter, also on May 8, 2023, the parties appeared at a prehearing conference and advised the IHO that the partial settlement agreement had been signed by the parent and the district's representative, and that the only remaining issue remaining was the parent's request for compensatory education (IHO Ex. II-F at pp. 7-8).

In a letter dated May 9, 2023, the day after the May 8, 2023 prehearing conference, newly retained lay advocates for the parent notified the IHO and the district that the parent "hereby withdr[ew] her agreement and immediately void[ed] the PARTIAL SETTLEMENT AGREEMENT signed yesterday" (IHO Ex. II-E at pp. 1-2). The letter further explained that the parent had been seeking representation since her attorney withdrew as counsel in April 2023 and that the parent "felt forced to sign" the partial settlement agreement as a pro se parent (id. at p. 1). The parent's advocates noted that "[b]ased on a cursory review of the issues at hand, the Parent will [be] requesting to amend the hearing request and/or initiate another hearing request in the near future" (id. at p. 2).

A. Due Process Complaint Notice

The parent's advocates filed a due process complaint notice dated May 22, 2023, which underlies proceeding 2 that is the subject of this appeal (IHO Ex. II-D at p. 2).[3] In the May 2023 due process complaint notice, the parent alleged, at that point in the 2022-23 school year, the student had received only some special education services from the district, including as of the date of the complaint, virtual tutoring instruction from a teacher not certified in the State, as well as virtual related services (id. at p. 3). The parent alleged that the virtual programming was not pursuant to an IEP or a pendency placement, that she did not agree with the services, and that the services were not appropriate for the student (id.). In addition, the parent asserted her disagreement with a January 2022 IEP and alleged that the district failed to develop an IEP for the student for the 2022-23 or 2023-24 school years (id. at pp. 3-5). The parent claimed that the district failed to provide prior written notice, failed to take into account the parent's concerns or a private evaluation, failed to comprehensively evaluate the student, inappropriately found the student eligible for special education as a student with multiple disabilities, developed inappropriate present levels of performance and annual goals, recommended an inappropriate program and services that did not constitute the student's least restrictive environment (LRE), failed to recommend parent counseling and training or transition services, and failed to recommend appropriate extended school year services for summer 2022 and 2023 (id. at pp. 4-5).

For relief, the parent requested that the district conduct specific evaluations and fund independent educational evaluations (IEEs) and that the CSE be required to convene and develop an IEP with specific programming for the student for the 2023-24 school year, including placement in a special class (IHO Ex. II-D at pp. 5-8). For the remainder of the 2022-23 school year, the parent requested that the district provide the virtual programming identified in the January 2022 IEP (id. at p. 8). In addition, the parent requested compensatory education (id. at p. 9). The parent requested that the May 2023 due process complaint notice be consolidated with proceeding 1 (id.).

[3] Although the district indicates that the May 2023 due process complaint notice was filed on June 5, 2023, the document will be referenced as dated.

B. Impartial Hearing Officer Decision

By notice of motion dated June 2, 2023, with supporting documentation, the district moved to dismiss the May 2023 due process complaint notice (Interim IHO Decision—Ex. III).[4] In an interim decision dated June 16, 2023, the IHO declined to consolidate the proceedings involving the May 2023 due process complaint notice and the September 2022 due process complaint notice, reasoning that "consolidation would have detrimental consequences upon a party to this proceeding viz: District's entitlement to be heard and have determined District's Motion to Dismiss" (Interim IHO Decision at pp. 4-5).

Thereafter, on July 3, 2023, the district refiled its motion to dismiss the May 2023 due process complaint notice (IHO Exs. I, II). The district asserted that the May 2023 due process complaint notice was an attempt to relitigate matters settled as part of proceeding 1 (IHO Ex. II at ¶¶ 3-12). The parent's advocates submitted a response to the district's motion, dated July 21, 2023, to which the district responded on August 7, 2023 (IHO Exs. III; IV).

In a decision dated August 15, 2022, the IHO dismissed the parent's May 2023 due process complaint notice with prejudice (IHO Decision). After reviewing the procedural history of both proceeding 1 and the current matter, the IHO reviewed the parties' arguments related to the parent's attempt to rescind the May 2023 partial settlement agreement (id. at pp. 3-9). The IHO then reasoned that the parent could not "file a new [d]ue [p]rocess [c]omplaint involving the same allegation of [d]istrict's failure to provide [s]tudent with FAPE during that same school year, but with added issues of program, of relief, and of new requests for evaluations" (id. at p. 9).

IV. Appeal for State-Level Review

The parties' familiarity with the particular issues for review on appeal in the parent's request for review and the district's answer thereto is also presumed and, therefore, the allegations and arguments will not be recited here. The crux of the parties' dispute on appeal is whether the IHO correctly dismissed the parent's May 2023 due process complaint notice regarding the 2022-23 school year with prejudice. The parent asserts that the IHO erred in dismissing her May 2023 due process complaint notice and seeks a finding that the partial settlement agreement is rescinded and that the parent may pursue her request for a special class placement from the district for the 2023-24 school year as requested in the May 2023 due process complaint notice. The district asserts that the IHO correctly determined that the parent was bound by the terms of the partial settlement agreement and that the parent was precluded from initiating this proceeding to seek relief from the claims resolved via the partial settlement agreement.

[4] Documents considered by the IHO in ruling on consolidation of the the due process complaint notices were separately identified by the IHO as IHO exhibits and are attached to the interim decision in the hearing record on appeal. To avoid confusion with IHO exhibits entered into evidence as part of proceeding 2, references to the IHO exhibits attached to the interim decision will be preceded by citation to the interim decision (e.g., "Interim IHO Decision—Ex. III").

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]).[5]

The burden of proof is on the school district during an impartial hearing, except that a parent seeking tuition reimbursement for a unilateral placement has the burden of proof regarding the appropriateness of such placement (Educ. Law § 4404[1][c]; see R.E., 694 F.3d at 184-85).

VI. Discussion

The IHO dismissed the parent's May 2023 due process complaint notice on the basis that it was duplicative of claims contained in her September 2022 due process complaint notice (IHO Decision at p. 9). The IHO reserved judgment on the question of the parent's rescission of the May 2023 partial settlement agreement until "a hearing on such issue" took place, noting that certain terms pertaining to the district's provision of "virtual home-based instruction" to the student as his programming during the 2023-24 school year were contrary to the parent's position stated in the May 2023 due process complaint notice and in her affidavit, and could have "been a result of over-reaching by District" (id. at pp. 8-9, quoting IHO Ex. II-C).[6] The IHO declined to dismiss the parent's May 2023 due process complaint notice on the basis of res judicata, generally noting that,

[5] 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).

[6] As of the date of the IHO's decision in the present matter, the district reportedly had not yet, as part of proceeding 1, addressed the parent's attempt to rescind the settlement agreement (IHO Decision at p. 5).

regardless of how he ruled on the issue of the parent's recission of the partial settlement agreement, that matter would go forward at least on the question of compensatory education and at most on the merits of the parent's claims set forth in the September 2022 due process complaint notice (IHO Decision at p. 9). Instead, the IHO found that the parent's May 2023 due process complaint notice included the same allegations as to a denial of FAPE for the 2022-23 school year as the September 2022 due process complaint notice with some additional claims and requests for relief (id.). Finding that the parent already filed a complaint regarding the 2022-23 school year and that the parent was not free to file any subsequent complaints, the IHO dismissed the parent's May 2023 due process complaint notice with prejudice (id.).

Generally speaking, the IDEA allows a parent to file "a separate due process complaint on an issue separate from a due process complaint already filed" (20 U.S.C. § 1415[o]; 34 CFR 300.513[c]). Here, in the May 2023 due process complaint notice, the parent's allegations, while overlapping in some respects to those included in the September 2022 due process complaint notice, also included new claims, some of which related to a new time period (compare IHO Ex. II-A, with IHO Ex. II-D).

Specifically, the parent's September 2022 due process complaint notice alleged that the district did not provide the student with a FAPE for the 2022-23 school year, primarily based on allegations that the district failed to provide the student with agreed-upon virtual 1:1 instruction and OT at the start of the 2022-23 school year (IHO Ex. II-A at p. 3). The parent's second due process complaint notice, filed in May 2023, included allegations related to the district's failure to provide the student with educational services during the 2022-23 school year similar to the allegations raised in the September 2022 due process compliant notice, with further elaboration regarding the implementation of services for the time period between September 2022 and May 2023 and also raised allegations that the district failed to develop an IEP for the student for both the 2022-23 school year and the 2023-24 school years, including specific allegations related to development of recommendations made in the student's last IEP (IHO Ex. II-D at pp. 2-4).

While the IHO did not dismiss the matter on res judicata grounds, a discussion of the doctrine serves to underscore why the IHO's dismissal may not stand. It is well-established that the doctrine of res judicata and the related doctrine of collateral estoppel apply to administrative proceedings when the agency acts in a judicial capacity (see K.C. v. Chappaqua Cent. Sch. Dist., 2017 WL 2417019, at *6 [S.D.N.Y. June 2, 2017]; K.B. v. Pearl River Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012]; Schreiber v. E. Ramapo Cent. Sch. Dist., 700 F. Supp. 2d 529, 554-55 [S.D.N.Y. 2010]; Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *6 [N.D.N.Y. Dec. 19. 2006]). The doctrine of res judicata (or claim preclusion) "precludes parties from relitigating issues that were or could have been raised in a prior proceeding" (K.B., 2012 WL 234392, at *4; see Perez v. Danbury Hosp., 347 F.3d 419, 426 [2d Cir. 2003]; Murphy v. Gallagher, 761 F.2d 878, 879 [2d Cir. 1985]; Grenon, 2006 WL 3751450, at *6). Res judicata applies when: (1) the prior proceeding involved an adjudication on the merits; (2) the prior proceeding involved the same parties or those in privity with the parties; and (3) the claims alleged in the subsequent

action were, or could have been, raised in the prior proceeding (see K.B., 2012 WL 234392, at *4; Grenon, 2006 WL 3751450, at *6).[7]

Here, as to the second and third elements of the doctrine of res judicata, it is undisputed that proceeding 1 involved the same parties as the present matter, and the district correctly submits that the allegations in the May 2023 due process complaint that relate to the district's failure to provide the services to the student in the beginning of the 2022-23 school year were the same claims raised in the parent's September 2022 due process complaint notice (at least to the extent that they overlap in time) (compare IHO Ex. II-A at pp. 2-3, with IHO Ex. II-D at pp. 2-4). Further, the parent's additional claims related to the 2022-23 school year set forth in the May 2023 due process complaint notice could have been raised in her September 2022 due process complaint notice (IHO Ex. II-D at pp. 2, 4-8).

However, whether or not the IHO deems the May 2023 partial settlement agreement rescinded in proceeding 1, the agreement only partially resolved the parent's claims raised in the September 2022 due process compliant notice and the parent's request for compensatory education is still pending resolution (see Chen v. Fischer, 6 N.Y.3d 94, 100 [2005] ["[P]rinciples of res judicata require that 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy'"], quoting O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 [1981]; Sure-Snap Corp. v. State St. Bank and Trust Co., 948 F.2d 869, 875 [2d Cir. 1991]). At the time the parent filed the May 2023 due process complaint notice, her request to rescind the partial settlement agreement was still pending before the IHO as was the issue of compensatory education for the 2022-23 school year (see IHO Exs. II-C; II-E). Accordingly, the first element of res judicata has not been met because there has not been an adjudication on the merits of the parent's September 2022 due process complaint notice. Accordingly, the IHO correctly declined to dismiss the matter on res judicata grounds.

Instead, as noted above, in dismissing the May 2023 due process complaint notice, the IHO relied generally on the duplicative nature of the parent's claims when compared to the September 2022 due process complaint notice (IHO Decision at p. 9). Related to res judicata is the rule against "claim splitting" (see Curtis v. Citibank, N.A., 226 F.3d 133, 138 [2d Cir. 2000] [noting that "the rule against duplicative litigation is distinct from but related to the doctrine of claim preclusion or res judicata"]; LG Elecs., Inc. v. Wi-LAN USA, Inc., 2015 WL 4578537, at *5 [S.D.N.Y. July 29, 2015] [noting that res judicata concerns motivate the doctrine of claim splitting]; Coleman v. B.G. Sulzle, Inc., 402 F. Supp. 2d 403, 418-19 [N.D.N.Y. 2005] [acknowledging the "close relationship between claim splitting and res judicata"]; see also Katz v. Gerardi, 655 F.3d 1212, 1218 [10th Cir. 2011] [indicating that claim splitting is examined as an aspect of res judicata]).

The doctrine of claim splitting generally refers to a court's authority to manage its docket and applies when the two duplicative cases involving the same subject matter are pending simultaneously in the same court against the same defendant (Kanciper v. Suffolk Cnty. Soc'y, 722

[7] Additionally, while the IDEA allows a parent to file "a separate due process complaint on an issue separate from a due process complaint already filed" (20 U.S.C. § 1415[o]; 34 CFR 300.513[c]), "consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint" are encouraged (Due Process Procedures for Parents and Children, 70 Fed. Reg. 35782 [June 21, 2005]).

F.3d 88, 92-93 [2d Cir. 2013], citing Curtis v. Citibank, N.A., 226 F.3d 133, 138-39 [2d Cir. 2000]). Here, since at least the issue of compensatory education as relief related to the allegations raised in the parent's September 2022 due process complaint notice was pending before the IHO at the time the parent filed the May 2023 due process complaint notice, the IHO was correct to address the rule against duplicative litigation (compare IHO Ex. II-A, with IHO Ex. II-D; IHO Decision at pp. 5, 9). However, ideally, the IHO should have considered measures other than dismissing the May 2023 due process complaint notice with prejudice (cf. Curtis, 226 F.3d at 138 [noting that "a court faced with a duplicative suit will commonly stay the second suit, dismiss it without prejudice, enjoin the parties from proceeding with it, or consolidate the two actions"]). For example, the IHO could have consolidated the matters (8 NYCRR 200.5[j][3][ii][a]) or allowed an amendment to the September 2022 due process complaint notice to include the additional claims raised in the May 2023 due process complaint notice to be addressed (20 U.S.C. § 1415[c][2][E][i][II]; 34 CFR 300.508[d][3][ii]; 8 NYCRR 200.5[i][7][i][b]).[8, 9]

The IHO's reticence in allowing proceeding 2 to continue is understandable in light of the duplicative claims and the parent seeming to take positions in contradiction to earlier stances stated during proceeding 1. This includes the question of whether the parent's allegations in the May 2023 due process complaint notice seem to challenge the nature of the relief that was originally sought and—in the event the partial settlement agreement is deemed enforceable—agreed upon in proceeding 1.[10] However, given the continued uncertainty of the status of the partial settlement agreement arising from proceeding 1, it is impossible to assess the effect of proceeding 1, including

[8] In her May 2023 due process complaint notice, the parent requested consolidation of the May 2023 and the September 2022 due process complaint notices (IHO Ex. II-D at p. 10). As noted above, the IHO declined consolidation of the two proceedings so that he could address the district's motion to dismiss the May 2023 due process complaint notice separately from the proceeding regarding the September 2022 due process complaint notice (June 16, 2023 Interim IHO Decision).

[9] The district's motion to dismiss in proceeding 2 is analogous to a motion to dismiss when there is "another action pending between the same parties for the same cause of action" under New York's Civil Practice Law and Rules (CPLR 3211[a][4]), which function similarly to the provisions permitting separate due process complaints on separate issues in 20 U.S.C. § 1415(o). The CPLR provision provides that if there is another action pending, the court "need not dismiss upon this ground but may make such order as justice requires" (CPLR 3211[a][4]). There is no formal, explicit adoption of the CPLR procedures in administrative due process proceedings under IDEA, just as the technical rules of evidence do not formally apply. However, administrative hearing officers have at times found the elements and principles underlying the CPLR or the federal rules of civil procedure, if used cautiously and consistently with all IDEA-specific caselaw and regulations, to be a useful, familiar framework when filling in gaps to structure the administrative proceedings, especially when the IDEA hearing framework is silent and needs to be fleshed out in order to conduct the proceeding in a fair and reasonable manner.

[10] To the extent the partial settlement agreement is deemed enforceable and includes prospective relief pertaining to the student's programming for the 2023-23 school year, the parent, who now appears to disagree with that programming, could be faced with the pitfalls of prospective relief of this kind that have been noted in multiple State-level administrative review decisions, including that where a prospective placement is obtained by the parents through the impartial hearing, such relief could be treated as an election of remedies, where the parents assume the risk that future unforeseen events could cause the relief to be undesirable (see, e.g., Application of a Student with a Disability, Appeal No. 19-018).

the effect of such agreement, on the claims raised in proceeding 2.[11] Accordingly, the matter must be remanded to the IHO for further proceedings (8 NYCRR 279.10[c]).

Considering that the issues raised in the May 2023 due process complaint notice and the issues currently pending before the IHO regarding the September 2022 due process complaint notice are related, the IHO may want to reconsider his determination as to consolidation of the two proceedings. In addition, after ruling on the parent's request for recission of the partial settlement agreement in proceeding 1, the IHO may, at that juncture, want to give the parties an opportunity to be heard on the question of what claims from the September 2022 and/or May 2023 due process complaint notices, if any, would still require a determination from the IHO.

VII. Conclusion

For the reasons stated above, the IHO erred in dismissing the parent's May 2023 due process complaint notice with prejudice and the matter must be remanded to the IHO for further proceedings.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that the IHO's decision, dated August 15, 2023, is reversed and the matter is remanded to the IHO to determine the merits of the issue(s) and/or claim(s) arising from the parent's May 2023 due process complaint notice consistent with the body of this decision.

Dated: **Albany, New York**
October 19, 2023

SARAH L. HARRINGTON
STATE REVIEW OFFICER

[11] Any question about the enforceability of the partial settlement agreement is not properly before me. Rather, at the time of the parent's appeal, the issue remained pending adjudication by the IHO in proceeding 1.