The University of the State of New York

The State Education Department
State Review Officer
www.sro.nysed.gov

No. 24-212

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 New York City Department of Education

Appearances:
Gulkowitz Berger LLP, attorneys for petitioner, by Shaya M. Berger, Esq.

Liz Vladeck, General Counsel, attorneys for respondent, by Thomas W. MacLeod, 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 determined that she failed to timely request equitable services from respondent (the district) pursuant to Education Law §3602-c for the 2023-24 school year and denied her request for the district fund her son's private special education services delivered by Always a Step Ahead Inc. (Step Ahead) for the 2023-24 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student who resides in New York is eligible for special education services and attends a nonpublic school, Article 73 of the New York State Education Law allows for the creation of an individualized education services program (IESP) under the State's so-called "dual enrollment" statute (see Educ. Law §3602-c). The task of creating an IESP is assigned to the same committee that designs educational programing for students with disabilities under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482), namely a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B];

34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts related to IESPs, State law provides that "[r]eview of the recommendation of the committee on special education may be obtained by the parent or person in parental relation of the pupil pursuant to the provisions of [Education Law § 4404]," which effectuates the due process provisions called for by the IDEA (Educ. Law § 3602-c[2][b][1]). Incorporated among the procedural protections of the IDEA and the analogous State law provisions 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 facts and procedural history of the case and the IHO's decision will not be recited in detailed. Briefly, the Committee on Preschool Special Education (CPSE) convened on June 26, 2020, found the student eligible for special education services as a preschool student with a disability, and developed an IEP recommending that the student receive related services of two 30-minute sessions per week of group speech-language therapy and three 30-minute sessions per week of group occupational therapy (OT) (Parent Ex. B at pp. 1, 11). On March 9, 2022, the CSE convened, found the student eligible for special education services as a student with a speech or language impairment, and developed an IESP that recommended the student receive two 30-minute sessions per week of group speech-language therapy and two 30-minute sessions per week of group OT with an implementation date of September 5, 2022 (IHO Ex. IV at pp. 1, 3, 8).[1] For the 2023-24 school year the student attended a nonpublic school (Parent Ex. G at p. 1).

On September 1, 2023, the parent signed a document from Step Ahead indicating that she was aware that Step Ahead charged $250 per hour for related services and that she would be responsible to pay for services delivered to the student (Parent Ex. F).[2] As part of the letter, the parent agreed that the related services provided to her son would be consistent with those listed in the June 2020 IEP (id.).

In a due process complaint notice, dated December 14, 2023, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) and/or equitable services for the 2023-24 school year (see Parent Ex. A). The parent asserted that the last educational program developed for the student was developed in June 2020 included two 30-minute sessions per week of speech-language therapy in a group of two and three 30-minute sessions per week of OT in a group of two and the parent disputed any program that the district later developed that either removed or reduced the student's services (Parent Ex. A at p. 1). The parent also indicated that the district failed to provide the student with his related services for the 2023-24 school year and the parent found providers for the student's services but "at rates higher than standard [district] rates" (id.). The parent sought a pendency hearing and an order for funding of the two 30-minute sessions per week of group speech-language therapy and three 30-minute sessions per week of group OT at enhanced rates for the 2023-24 school year (id. at p. 2). The district provided a response to the due process complaint notice generally denying the material allegations contained therein (see Parent Ex C).

After the appointment of an IHO by the Office of Administrative Trials and Hearings (OATH) a prehearing conference was held on March 1, 2024, and an impartial hearing convened on March 13, 2024 and concluded on April 17, 2024 after two days of hearings (Tr. pp. 1-75).[3] A

[1] The student's eligibility for special education as a student with a speech or language impairment is not in dispute (see 8 NYCRR 200.1[zz][11]).

[2] The Commissioner of Education has not approved Step Ahead as a school or agency with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).

[3] The IHO issued a pre-hearing conference and summary order on March 1, 2024 (see generally IHO Ex. I).

pendency implementation form was signed by the district indicating that pendency was based on the student's June 2020 IEP (IHO Ex. V at p. 2). In a decision dated April 18, 2024, the IHO denied the parent's requested relief and dismissed the due process complaint notice with prejudice because the parent failed to comply with the June 1 deadline set forth in Education Law § 3602-c for requesting equitable services (IHO Decision at pp. 4-6).

IV. Appeal for State-Level Review

The parent appeals. 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 repeated. The gravamen of the parties' dispute on appeal is whether the parent complied with the June 1 deadline thus entitling the student to equitable services under New York Education Law § 3602-c or should be otherwise excused for not requesting services prior to the deadline.

V. Applicable Standards

A board of education must offer a FAPE to each student with a disability residing in the school district who requires special education services or programs (20 U.S.C. § 1412[a][1][A]; Educ. Law § 4402[2][a], [b][2]). However, the IDEA confers no individual entitlement to special education or related services upon students who are enrolled by their parents in nonpublic schools (see 34 CFR 300.137[a]). Although districts are required by the IDEA to participate in a consultation process for making special education services available to students who are enrolled privately by their parents in nonpublic schools, such students are not individually entitled under the IDEA to receive some or all of the special education and related services they would receive if enrolled in a public school (see 34 CFR 300.134, 300.137[a], [c], 300.138[b]).

However, under State law, parents of a student with a disability who have privately enrolled their child in a nonpublic school may seek to obtain educational "services" for their child by filing a request for such services in the district of location where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]). "Boards of education of all school districts of the state shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent" (Educ. Law § 3602-c[2][a]). In such circumstances, the district of location's CSE must review the request for services and "develop an [IESP] for the student based on the student's individual needs in the same manner and with the same contents as an individualized education program" (IEP) (Educ. Law § 3602-c[2][b][1]). The CSE must "assure that special education programs and services are made available to students with disabilities attending nonpublic schools located within the school district on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public or nonpublic schools located within the school district (id.).[4]

[4] State guidance explains that providing services on an "equitable basis" means that "special education services are provided to parentally placed nonpublic school students with disabilities in the same manner as compared to other students with disabilities attending public or nonpublic schools located within the school district" ("Chapter 378 of the Laws of 2007–Guidance on Parentally Placed Nonpublic Elementary and Secondary School Students

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. v. New York City Dep't of Educ., 694 F.3d 167, 184-85 [2d Cir. 2012]).

VI. Discussion

At this stage, the inquiry is limited to whether the hearing record supports the IHO's decision on the district's affirmative defense. For the reasons set forth below, the hearing record supports the IHO's determination that the parent did not comply with the June 1 deadline under Education Law § 3602-c.

The State's dual enrollment statute requires parents of a New York State resident student with a disability who is parentally placed in a nonpublic school and for whom the parents seek to obtain educational services to file a request for such services in the district where the nonpublic school is located on or before the first day of June preceding the school year for which the request for services is made (Educ. Law § 3602-c[2]).

The parent first argues that Education Law § 3602-c does not require that a written request for services be filed "every June 1 prior to a school year" (Req. for Rev. ¶ 10). She claims, instead, that "[t]he legislature intended that the school districts of private schools be put on notice" and that a parent must file the request prior to June 1 of the school year in which the services are first requested but that, thereafter, the CSE is required to annually review the student's IESP (id.). However, this argument is in direct contravention of the requirement set forth in Education Law § 3602-c, which states that the request be filed "on or before the first of June preceding the school year for which the request is made" (Educ. Law § 3602-c[2][a] [emphasis added]). The statute does not differentiate between students already identified and receiving services pursuant to an IESP during the prior school year and those who are not; however, the law does make exceptions for students first identified as students with disabilities after the June 1 deadline (Educ. Law § 3602-c[2][a]). Accordingly, to satisfy the statutory notice requirement, parents must make the request each year for which they seek dual enrollment services.

Next, the parent argues that State law does not specify consequences for failing to abide by the June 1 deadline. In fact, Education Law § 3602-c is written in a manner that indicates that the district's obligation to provide services to parentally placed students is triggered by a parent first making a request in writing prior to the deadline, specifically providing that districts "shall furnish services to students who are residents of this state and who attend nonpublic schools located in such school districts, upon the written request of the parent or person in parental relation of any such student" (Educ. Law § 3602-c[2][a]). It further provides that "[i]n the case of education for students with disabilities, such a request shall be filed with the trustees or board of education of

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with Disabilities Pursuant to the Individuals with Disabilities Education Act (IDEA) 2004 and New York State (NYS) Education Law Section 3602-c," Attachment 1 at p. 11, VESID Mem. [Sept. 2007], available at https://www.nysed.gov/sites/default/files/special-education/memo/chapter-378-laws-2007-guidance-on-nonpublic-placements-memo-september-2007.pdf). The guidance document further provides that "parentally placed nonpublic students must be provided services based on need and the same range of services provided by the district of location to its public school students must be made available to nonpublic students, taking into account the student's placement in the nonpublic school program" (id.).

the school district of location on or before the first of June preceding the school year for which the request is made" (id.). Accordingly, the statute does provide a consequence if a parent fails to timely request services by June first – the district will not be required to develop an IESP or provide equitable services pursuant to Education Law § 3602-c to such a parentally placed student (see Educ. Law § 3602-c[2][a]).

The district's attorney raised the issue of the June 1 deadline as an affirmative defense in an opening statement on March 13, 2024 (Tr. p. 15). In response, the parent's attorney first asserted that the student was a preschool student and therefore was not required to file notice under Education Law § 3602-c before withdrawing that argument (Tr. pp. 16-17). The attorney for the parent then focused his entire argument on the district's response to the due process complaint notice, asserting that the district conceded the student was entitled to services (Tr. pp. 17-19). However, review of the district's due process response does not show any representation by the district that the student was entitled to services pursuant to an IESP for the 2023-24 school year, only that one was developed for the student on March 9, 2022 (Parent Ex. C). Additionally, State regulation does not require that an affirmative defense, such as the failure to provide notice prior to June 1, be raised in a due process response (see 8 NYCRR 200.5[i][4], [5]).

Here, the IHO did correctly note that the June 1 deadline is an affirmative defense (IHO Decision at p. 5). As noted in prior SRO decisions, the issue of the June 1 deadline fits with other defenses, such as the defense of the statute of limitations, which are required to be raised at the hearing (see M.G. v. New York City Dep't of Educ., 15 F. Supp. 3d 296, 304, 306 [S.D.N.Y. 2014] [holding that the limitations defense is "subject to the doctrine of waiver if not raised at the initial administrative hearing" and that where a district does "not raise the statute of limitations at the initial due process hearing, the argument has been waived"]; see also R.B. v. Dep't of Educ. of the City of New York, 2011 WL 4375694, at *4-*6 [S.D.N.Y. Sept. 16, 2011] [noting that the IDEA "requir[es] parties to raise all issues at the lowest administrative level" and holding that a district had not waived the limitations defense by failing to raise it in a response to the due process complaint notice where the district articulated its position prior to the impartial hearing]; Vultaggio v. Bd. of Educ., Smithtown Cent. Sch. Dist., 216 F. Supp. 2d 96, 103 [E.D.N.Y. 2002] [noting that "any argument that could be raised in an administrative setting, should be raised in that setting"]).[5]

Accordingly, the district did not waive any defenses based on the June 1 deadline by failing to include them in its due process response.

Further, in this case, there is no evidence in the hearing record showing that the parent complied with the notice requirement on or before June 1, 2023. The Commissioner of Education has previously addressed this issue and determined that a parent's lack of awareness of the June 1 statutory deadline does not invalidate the parent's obligation to submit a request for dual enrollment by the June 1 deadline (Appeal of Austin, 44 Ed. Dep't Rep. 352, Decision No. 15,195, available at https://www.counsel.nysed.gov/ Decisions/volume44/d15195; Appeal of Beauman, 43 Ed Dep't Rep 212, Decision No. 14,974 available

[5] As noted in prior SRO decisions, the June 1 deadline may be waived; however, the response to the due process complaint notice is not a waiver, especially where the parties discussed the issue prior to the commencement of the merits portion of the impartial hearing (see e.g., Application of a Student with a Disability, Appeal No. 23-032).

at https://www.counsel.nysed.gov/Decisions/volume43/d14974). Specifically, the Commissioner stated that Education Law § "3602-c(2) does not require [the district] to post a notice of the deadline" and that a parent being "unaware of the deadline does not provide a legal basis" for the waiver of the statutory deadline for dual enrollment applications (Appeal of Austin).

Turning to parent's argument about the burden of proof regarding whether the parent provided a written request for equitable services by June 1, under the IDEA, the burden of persuasion in an administrative hearing challenging an IEP is on the party seeking relief (see Schaffer v. Weast, 546 U.S. 49, 59-62 [2005] [finding it improper under the IDEA to assume that every IEP is invalid until the school district demonstrates that it is not]). However, under State law, the burden of proof has been placed 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 Hardison v. Bd. of Educ. of the Oneonta City Sch. Dist., 773 F.3d 372, 386 [2d Cir. 2014]; C.F. v. New York City Dep't of Educ., 746 F.3d 68, 76 [2d Cir. 2014]; R.E., 694 F.3d at 184-85).

While a school district carries the burden of proof at the impartial hearing, here the parent was the individual in whose custody and control the purported notice would have rested. Additionally, as noted above, in response to the district raising the June 1 deadline as a defense, neither the parent nor the attorney for the parent asserted that a notice was sent (Tr. pp. 17-21). Additionally, the IHO gave the parent the opportunity to submit evidence that a letter was sent or to appear and offer testimony; however, the parent failed to submit evidence of a notice to the district requesting equitable services and failed to appear to testify at the impartial hearing (Tr. pp. 20-21; see Tr. pp. 31-75). When asked during the hearing whether the parent had evidence of the June 1 notification, the parent's attorney represented that there was no documentation regarding this issue (Tr. p. 35). Further, the parent's attorney, although he requested an adjournment for the parent to testify, did not ever affirmatively assert that a notice was sent or that the parent would testify that a notice was sent to the district (Tr. pp. 35, 49, 50-51, 71-74). Similarly, on appeal, the parent also does not affirmatively assert or argue that she did provide timely notice but alleges that the IHO erred in her findings. Under the circumstances, I do not find that the IHO improperly shifted the burden of proof to the parent.[6]

Thus, the hearing record contains no evidence satisfying the requirement under Education Law § 3602-c, namely, that the parent made a written request for IESP services by June 1 preceding the 2023-24 school year (see generally Tr. pp. 1-75; Parent Exs. A-H).

The parent also argues that under Education Law § 3602-c, the district was required to provide prior written notice before initiating or changing the provision of FAPE to the student, i.e., removing the student's services because the parent failed to file a June 1 request for equitable services (Req. for Rev. ¶ 11).[7] However, the parent's argument about the district's obligation to

[6] The district noted in its post-hearing brief that it would "support keeping the record open, even after close of the hearing" to permit the parent the opportunity to produce a communication showing that the parent requested equitable services (IHO Ex. III at p. 3). However, to this point, there has been no evidence produced either in the form of either testimony or documentation indicating that a notice was sent.

[7] State and federal regulations require that a district provide parents of a student with a disability with prior written

provide prior written notice conflates the district's obligations under the IDEA with the requirements of Education Law § 3602-c in an effort to excuse the parent's failure to comply with the notice requirement set forth in Education Law § 3602-c. Here, the IHO found that the parent did not request equitable services in accordance with Education Law § 3602-c. When the parent's failure to make a written request for IESP services in a manner consistent with State law was in dispute, courts have grappled with the effect of a parent's intention to place a student at a nonpublic school on the district's obligation to provide the student with an IEP. For example, in E.T. v. Board of Education of Pine Bush Central School District, after concluding that the district retained an obligation to offer the student a FAPE, the court found that the "issue of the parents' intent [was] a question that inform[ed] the balancing of the equities rather than whether the district had an obligation to the child under the IDEA" (2012 WL 5936537, at *16 [S.D.N.Y. Nov. 26, 2012]). In contrast to the court's holding in E.T., at least two federal district courts have found an objective manifestation of the parent's intention to place the student in a nonpublic school as a threshold issue regarding whether a district remained obligated to offer the student a FAPE (see Dist. of Columbia v. Vinyard, 971 F. Supp. 2d 103, 108-10 [D.D.C. 2013] [finding the court's explanation in E.T. "illogical"] [emphasis added]; Shane T. v. Carbondale Area Sch. Dist., 2017 WL 4314555, at *15-*20 [M.D. Pa. Sept. 28, 2017]). Here, upon review of the parent's due process complaint notice, it does not appear that the parent ever sought a public placement for the student (see Parent Ex. A). Accordingly, prior written notice was not required as to equitable services under § 3602-c and any lack of prior written notice related to the provision of a FAPE was not an issue properly raised in this proceeding.

Additionally, the parent argues that she was denied the opportunity for an adjournment in which to present evidence that the district's affirmative defense was not applicable (Req. for Rev. ¶ 14). However, in addition to the above-mentioned concern that parent's counsel has not yet argued or produced any evidence that a notice was actually sent, contrary to the parent's contention, the IHO already granted an adjournment to allow an opportunity for the parent to testify, but the parent did not avail herself of that opportunity (see Tr. pp. 20, 23-24, 35, 47-48). Generally, unless specifically prohibited by regulation, IHOs are provided with broad discretion, subject to administrative and judicial review procedures, in how they conduct an impartial hearing, so long as they "accord each party a meaningful opportunity" to exercise their rights during the impartial hearing (Letter to Anonymous, 23 IDELR 1073 [OSEP 1995]; see Impartial Due Process Hearing, 71 Fed. Reg. 46,704 [Aug. 14, 2006] [indicating that IHOs should be granted discretion to conduct hearings in accordance with standard legal practice, so long as they do not interfere with a party's right to a timely due process hearing]). At the same time, the IHO is expected to ensure that the impartial hearing operates as an effective method for resolving disputes between the parents and district (Letter to Anonymous, 23 IDELR 1073). State and federal regulations balance the interests

notice "a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a [FAPE] to the student" (34 CFR 300.503[a]; 8 NYCRR 200.1[oo]; 200.5[a][1]). Pursuant to State and federal regulation prior written notice must include a description of the action proposed or refused by the district; an explanation of why the district proposed or refused the action; a description of the other options that the CSE considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the CSE used as a basis for the proposed or refused action; and a description of the other factors relevant to the CSE's proposal or refusal (34 CFR 300.503[b]; 8 NYCRR 200.5[a][3]).

of having a complete hearing record with the parties having sufficient opportunity to prepare their respective cases and review evidence.

During the March 13, 2024 hearing, after opening statements, and in response to the district's argument that the parent did not comply with the June 1 deadline, the IHO gave the parties time to "brief the issue and also whatever additional evidence that they ha[d] to support whether there was notice provided to the [d]istrict or whether there was not" (Tr. p. 20). The IHO further invited the parent to submit the June 1 notice into the hearing record (Tr. pp. 20, 26). Since the parent was not listed as a witness the IHO stated that there was no opportunity to ask the parent questions at that time and she would adjourn the hearing to a later date (Tr. p. 21). The next hearing date was scheduled for May 1, 2024 (Tr. pp. 27-28). On March 14, 2024, parent's counsel sent an email indicating that the parent was not available on May 1 and asking for a new date for the hearing on April 15, 16, or 17 (IHO Ex. II at pp. 3-4). After reaching agreement for new dates, the IHO scheduled the hearing for April 17, 2024 (id. at pp. 1-2).

It was not until the April 17, 2024 hearing date, that the parent's attorney informed the IHO that the parent was not available and requested another adjournment for her testimony (Tr. pp. 35, 38). According to the parent's attorney, the parent was unavailable to testify due to holiday preparations and travel and sought an adjournment for the parent to testify on another day (Tr. p. 35; IHO Ex. II at pp. 1-4). The IHO denied the request for an adjournment stating that the parent was unavailable for the date originally scheduled on May 1, 2024 and the rescheduled date was at the request of the parent and upon agreement of the parties (Tr. pp. 36-38). In addition, the IHO's prehearing conference order specified that, if either party sought an adjournment, that party must seek the consent of the other party and agree on two proposed dates before contacting the IHO (IHO Ex. I at p. 1). If the other party could not be reached or did not consent to the adjournment, the party had the opportunity to make a written motion for rescheduling to include a reason for the request, affidavit of unavailability, and two proposed dates (id. at pp. 1-2). No such written request or affidavit appears in the hearing record. Additionally, of particular note, according to the parent's attorney, the parent first told the attorney she could not make the hearing on the morning of the scheduled hearing (Tr. pp. 38), and, at this stage of the proceeding, a reason has still not been provided as to why the parent could not have reached out earlier (Req. for Rev. at ¶¶4, 14). The primary goal of the impartial hearing system under the IDEA is to ensure the timely resolution of disagreements and, while federal and State regulations provide that impartial hearings must be "conducted at a time and place that is reasonably convenient to the parents and child involved" (34 CFR 300.515[d]; 8 NYCRR 200.5[j][3][x]),[8] the hearing record reflects that the parent's representative did not request a different date or time in the reasonable manner provided for by the IHO. The IHO engaged in effective hearing management, while still offering flexibility to the parent, and the IHO's denial of the request for an adjournment was not an abuse of discretion and did not deny the parent due process.

[8] As all hearing dates in this matter were conducted remotely (see Tr. pp. 1, 11, 31), it does not appear that the location of the hearing was inconvenient to the parent.

For all the foregoing reasons, I find no reason to disturb the IHO's finding that the district was not obligated to provide the student with equitable services because the parent did not comply with the June 1 deadline set forth in Education Law § 3602-c.

VII. Conclusion

Having determined that the evidence in the hearing record supports the IHO's determinations, the necessary inquiry is at an end.

I have considered the parties' remaining contentions and find it is unnecessary to address them in light of my determinations above.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
July 3, 2024

STEVEN KROLAK
STATE REVIEW OFFICER