



# The University of the State of New York

## The State Education Department

State Review Officer

[www.sro.nysed.gov](http://www.sro.nysed.gov)

No. 24-313

**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 Board of Education of the Chappaqua Central School District**

### **Appearances:**

Law Office of Brian M. Higbie, attorneys for petitioner, by Brian Higbie, Esq.

Shaw, Perelson, May & Lambert, attorneys for respondent, by Michael K. Lambert, 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 denied her request for compensatory education related to the 2021-22 and 2022-23 school years. The appeal must be dismissed.

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

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

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

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

### **III. Facts and Procedural History**

Given the disposition of this matter on procedural grounds, a detailed recitation of facts relating to the student's educational history is not necessary.

Briefly, the student—who is eligible for special education and related services as a student with autism—received diagnoses of autism spectrum disorder (ASD), attention-deficit/hyperactivity disorder (ADHD), global development delays and epilepsy (Dist. Exs. 6 at p. 14; 15 at pp. 1, 8).

In a due process complaint notice dated March 23, 2023 and filed pro se, the parent claimed that the student's epilepsy had been severe since May 2022, which caused the student to have

limited attendance at her educational programming and resulted in missed services (IHO Ex. II at pp. 3-4). Specifically, the parent also alleged that the student required "sign language resource[s]" but did not receive them from September 2021 to February 2022 (*id.* at p. 4). The parent alleged that, at the outset of COVID-19 in March 2020, the student did not attend school in person, rather she participated in limited online services, there was "no sign language resource" from September 2021 to February 2022 when the student transitioned to a new program, and from May 2022 to early February 2023 the district failed to locate and provide a home service provider (*id.* at pp. 4-5). For the missed services, the parent requested relief in the form of "a compensatory education fund" to make-up for missed services that could be used to assist the student in her daily living, communication, and vocational skills, for the student to be allowed to receive services until she reached age 23, and for the student's IEP to be updated to include specific and measurable annual goals that aligned with the student's "adulthood/post-school education to live semi-independent to contribute/participate in the community" (*id.* at p. 5, 7).

In the due process complaint notice, the parent went on and described the student's educational history with sign language and her communication skills and further requested that because of the alleged gap in sign language service, the student's IEP be updated to include: a sign language instructor to accompany and teach the student throughout the school day; specific and measurable sign language and communication goals to aid the student to live a meaningful and semi-independent life; and a sign language consult for the parents (*id.* at pp. 6-7).

#### **IV. Impartial Hearing Officer Decision**

An IHO was appointed to hear the matter. According to the IHO, another IHO had previously been assigned to the matter, but later recused him or herself (IHO Decision at p. 1). The IHO was appointed to the matter on May 11, 2023 and further indicated that the parent filed a purported amendment to her March 2023 due process complaint notice on May 23, 2023 (*id.*).<sup>1</sup> According to the May 2023 amended due process complaint notice, due to the student's medical conditions and the district's inability to locate service providers, the student had missed more than 800 hours of education (Dist. Ex. 1 at p. 3). The parent alleged the 800 hours of missed education was "validated" by reviewing invoices paid by the district for "[s]ign services, [and] home tutor services" and the student's attendance records (*id.*).<sup>2</sup> The parent also clarified that the

---

<sup>1</sup> The IHO clarified in the final decision that there was no indication that the parent's March 2023 due process complaint notice was withdrawn or that the prior IHO directed the parent to submit a new due process complaint notice (IHO Decision at p. 1). The IHO further noted that the district objected to defending the March 2023 complaint arguing the May 2023 complaint superseded it, but the IHO further explained that because the district did not make a motion to dismiss the March 2023 due process complaint notice, the objection was assumed to be dropped and also that because the pro se parent explained that she attempted to clarify her compensatory education request rather than amend the whole March 2023 complaint, the May 2023 due process complaint notice would be considered an addition to the March 2023 complaint (*id.* at pp. 1-2; see generally Tr. pp. 6-25).

<sup>2</sup> The parent in her May 2023 amended due process complaint notice added a two-column chart with one column titled "[m]onth" which went from July 2020 to May 2023, and the other titled "[h]ours" with various amounts of hours indicated for each month (see Dist. Ex. 1 at p. 4). The last row indicated that the total amount of hours calculated from July 2020 to May 2023 was 1001.5 (*id.*); however, it is unclear from the May 2023 amended due process complaint notice whether the total hours represented the total hours of missed educational services, or the total hours of educational services provided to the student.

"compensatory education fund" should include but not be limited to the following services: home tutoring, independent sign language tutoring, speech therapy, occupational therapy, physical therapy, and vocational services (id. at p. 5).

On July 10, 2023, the parties proceeded to a prehearing conference by telephone which was described in a written summary dated July 15, 2023 (IHO Ex. I). According to prehearing conference summary, the conference was initially scheduled to review the district's position in response to the parent's May 2023 amended due process complaint notice but other preliminary issues regarding the hearing were addressed; including, but not limited to, clarifying the claims and the relief being sought, the evidence, witnesses, and the time and place of the hearings (id. at p. 1). The summary also indicated that the district objected to the parent's requested compensatory education stemming from violations alleged during the 2019-20 and 2020-21 school years arguing such violations were barred by the statute of limitations (id.).

An impartial hearing convened on September 28, 2023 and concluded on January 25, 2024 after six days of proceedings (see Tr. pp. 1-1214). In a 25-page decision dated June 10, 2024, the IHO determined that the "preponderance of evidence show[ed] that the [d]istrict provide[d] the student with a FAPE" (IHO Decision at p. 21). More specifically the IHO determined the district prevailed in its burden of providing a FAPE in the following instances: (1) the parent was given ample opportunity to participate in the education process and developing the student's IEPs; (2) the district provided sufficiently specific and measurable goals with substantial agreement and input from the parent; (3) the district provided the student with transitional skills, goals, and services in daily life skills and community which were at times hindered by the parent's opposition; and (4) the parent's claim for reimbursement for provider expenses must be denied for lack of substantial evidence supporting the facts as to time, particular services, and cost of the claim (IHO Decision at p. 23).

Then, the IHO indicated that despite his finding that the district provided the student a FAPE, there were two "viable issues" still to be addressed namely: whether the district provided the student with her missed IEP mandated services—primarily home services during periods of absence and whether the student's needs required updating testing in occupational therapy (OT) and physical therapy (PT) (IHO Decision at p. 23). According to the IHO, the "[d]istrict did not satisfy its requirement to provide a FAPE in these areas" (id.). Regarding the missed IEP mandated services, the IHO determined that, aside from the parties' mutually agreed upon periods of absence of a sign language teacher from September 2021 to February 2022, the evidence did not reliably show which services and how many hours had been missed despite the IHO's requests to clarify the matter, but that at certain points the district showed that it provided more services than required or that the student "received additional compensation not recorded" (IHO Decision at p. 24). The IHO noted that there was evidence of some regression in testing after the student's absences, but it was "impossible to put a meaningful interpretation on the data," thus a quantitative approach based on what could be determined from the available evidence of missed sessions was used by the IHO to determine an amount of compensatory education (id. at pp. 24-25). The IHO determined that based on the "only reliable data," the student missed approximately 180 hours of services (id. at p. 25). As a result, the IHO ordered the district to provide the student a "bank of services" to be used "up to the last date of her 21st birthday" consisting of 100 hours of transitional, vocational, daily living, socialization, and safety skills and 80 hours of sign language instruction (id.). The IHO also determined that there was evidence that the CSE questioned the most recent PT and OT

evaluation results due to the student's limitations in communication and thus, as relief, ordered the district to give the student a new evaluation in the areas of PT and OT (IHO Decision at p. 25).

## V. Appeal for State-Level Review

The parent, through an attorney, appeals, alleging that the IHO erred in awarding only 180 hours of compensatory education arguing the IHO should have awarded 991 hours. The parent also alleges the IHO erred by finding the district offered the student a FAPE, contending that the student had no access to education for over a year and argues the student should be allowed to stay in school until she is age 23. The parent further alleges that the IHO failed to address the parent's request for the student's IEP to be updated to include sign language instruction and support throughout the school day and that the IHO erred by excluding video recordings that showed the student's sign language skills and regression. In summary, the parent identifies the following six issues as being appealed: (1) the need for sign language—the district's failure and the IHO's misapprehension; (2) the IHO erred because the district denied the student a FAPE with respect to vocational and community activities; (3) the IHO erred because the district denied the student a FAPE with respect to transition planning (4) the IHO erred because the district's failings resulted in the student regressing; (5) the IHO erred in limiting the missed services to 180 hours; and (6) the IHO erred in blaming the parent for the district's failures and in not allowing the parent to advocate for the student at the hearing. As relief, the parent requests the awarded compensatory education be increased to 991 hours and that the district be directed to allow the student to attend school until she reaches the age of 23.<sup>3</sup>

In an answer, the district requests that the parent's appeal be dismissed for failure comply with practice regulations governing appeals. More specifically, the district alleges that the parent failed to properly serve the district; that the parent failed to timely initiate the appeal; and that the request for review fails to provide a clear and concise statement of the issues presented for review and the grounds for reversal. The district requests for the IHO's decision to be affirmed. The

---

<sup>3</sup> On July 26, 2024, the parent through her attorney requested an extension to August 30, 2024 to file an amended request for review which was granted in part by the undersigned on July 29, 2024, stating the parent was granted until August 9, 2024 to file an amended request for review; provided, however, that the district was not precluded from raising any defenses to the initial request for review (see July 26, 2024 Parent Extension Request Letter; July 29, 2024 SRO Letter). In the July 29, 2024 letter the undersigned also indicated that absent a request for an extension of time, that the parent's request for leave to file an amended request for review would be deemed abandoned and that the district must respond to the request for review that had already been served upon it. The undersigned also made the provision that the parent was not precluded from seeking further extension of time to serve and file an amended request for review, provided such request was made on or before August 7, 2024, for good cause shown (see July 29, 2024 SRO Letter). After the close of business, on August 9, 2024, the parent, through her attorney, requested a second extension of time to serve and file an amended request for review until August 30th 2024, asserting that he did not receive the undersigned's letter granting in part his July 26, 2024 extension request (see Aug. 9, 2024 Parent Extension Request Letter). In a letter dated August 12, 2024, the district through its attorney also filed objections to the parent's second extension request (see Aug. 12, 2024 District Objection to Request for Extension Letter). For the reasons described in a letter dated August 12, 2024, the undersigned found that the parent's attorney reasoning was insufficient and that the parent did not timely file a request for a further extension and denied the parent's request (see Aug. 12, 2024 OSR Letter). Among other reasons, was that a review of the State Review Office E-filing system record revealed that the July 29, 2024 SRO letter was sent to the parent's attorney's email address entered into the system and is the same email address that appears on the attorney's letterhead (id.).

district submits with its answer a declaration of a district senior office assistant notarized August 14, 2024 (see Answer Ex. 1).<sup>4</sup>

In a reply affidavit, the parent denies each of the district's allegations regarding her alleged failure to comply with practice regulations governing appeals.<sup>5</sup> The parent argues she properly and timely served the district with the notice of intention to seek review and the verified request for review.

## VI. Discussion – Service of Pleadings

As a threshold matter, it must be determined whether the appeal should be dismissed due to improper service of the request for review.

An appeal from an IHO's decision to an SRO—whether the appeal is by a district or a parent—must be initiated by timely personal service of a verified request for review and other supporting documents, if any, upon respondent (8 NYCRR 279.4[b], [c]). Personal service on a school district is made "by delivering a copy thereof to the district clerk, to a trustee or member of the board of education of such school district, to the superintendent of schools, or to a person who has been designated by the board of education to accept service" (8 NYCRR 279.4[b]).

Generally, the failure to comply with the practice requirements of Part 279 of the State regulations, including the failure to properly serve an initiating pleading in a timely manner, may result in the rejection of the submitted documents or the dismissal of a request for review by an

---

<sup>4</sup> Generally, documentary evidence not presented at an impartial hearing is considered in an appeal from an IHO's decision only if such additional evidence could not have been offered at the time of the impartial hearing and the evidence is necessary in order to render a decision (see, e.g., Application of a Student with a Disability, Appeal No. 08-030; Application of a Student with a Disability, Appeal No. 08-003; see also 8 NYCRR 279.10[b]; *L.K. v. Ne. Sch. Dist.*, 932 F. Supp. 2d 467, 488-89 [S.D.N.Y. 2013] [holding that additional evidence is necessary only if, without such evidence, the SRO is unable to render a decision]). Here, the additional evidence concerns the parent's service of the pleadings on appeal and, therefore, could not have been offered at the time of the impartial hearing and is necessary for addressing the district's argument concerning the lack of personal service of the parent's pleadings. Accordingly, the document has been considered.

<sup>5</sup> The parent's reply does not conform with form requirements. All pleadings and papers submitted to an SRO must "be endorsed with the name, mailing address, and telephone number of the party submitting the same or, if a party is represented by counsel, with the name, mailing address, and telephone number of the party's attorney" (8 NYCRR 279.7[a]). Moreover, all pleadings must be signed by an attorney, or by a party if the party is not represented by an attorney (8 NYCRR 279.8[4]). In general, the failure to comply with the practice requirements of Part 279 of the State regulations may result in the rejection of the submitted documents or the dismissal of a request for review by an SRO (8 NYCRR 279.8[a]-[b]; 279.13; see *T.W. v. Spencerport Cent. Sch. Dist.*, 891 F. Supp. 2d 438, 440-41 [W.D.N.Y. 2012] [upholding dismissal of a petition for review that was untimely and exceeded page limitations]). However, "judgments rendered solely on the basis of easily corrected procedural errors or 'mere technicalities,' are generally disfavored" (*J.E. v. Chappaqua Cent. Sch. Dist.*, 2015 WL 4934535, at \*4-\*6 [S.D.N.Y. Aug. 17, 2015], quoting *Foman v. Davis*, 371 U.S. 178 [1962]). Here, the parent's reply is not signed by the parent's attorney, rather the parent's attorney notarized the reply instead (see Reply). The parent's attorney's signature as a notary does not satisfy the form requirements pursuant to Part 279; however, given this matter is being dismissed on other procedural grounds, as indicated further below, it is not necessary to exercise my discretion to reject the reply. The attorney for the parent is cautioned that repeated failures to conform to the practice regulations with regard to the form requirements and the filing of pleadings can result in dismissal of an appeal by a State Review Officer.

SRO (8 NYCRR 279.8[a]; 279.13; see B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-66 [S.D.N.Y. Sept. 6, 2013] [upholding an SRO's dismissal of a parent's appeal where, among other procedural deficiencies, the amended petition was not personally served upon the district]; Application of a Student with a Disability, Appeal No. 16-015 [dismissing a parent's appeal for failure to effectuate proper personal service of the petition upon the district where the parent served a district employee not authorized to accept service]; Application of a Child with a Disability, Appeal No. 06-117 [dismissing a parent's appeal for failure to effectuate proper personal service in a timely manner where the parent served a CSE chairperson and, thereafter, served the superintendent but not until after the time permitted by State regulation expired]; see also Application of a Student with a Disability, Appeal No. 12-042 [dismissing parent's appeal for failure to properly effectuate service of the petition in a timely manner where the parent served the district's counsel by overnight mail]; Application of a Student with a Disability, Appeal No. 11-013 [dismissing parent's appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 11-012 [dismissing parents' appeal for failure to timely effectuate personal service of petition upon the district]; Application of a Student with a Disability, Appeal No. 09-099 [dismissing parents' appeal for failure to timely effectuate personal service of the petition upon the district]; Application of the Dep't of Educ., Appeal No. 05-082 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent's former counsel by overnight mail]; Application of the Dep't of Educ., Appeal No. 05-060 [dismissing a district's appeal for failing to timely file a hearing record on appeal]; Application of a Child with a Disability, Appeal No. 05-045 [dismissing a parent's appeal for, among other reasons, failure to effectuate proper personal service where the parent served a school psychologist]; Application of the Dep't of Educ., Appeal No. 01-048 [dismissing a district's appeal for failure to personally serve the petition upon the parent where the district served the parent by facsimile]).

On July 25, 2024, the parent through her attorney filed the following documents with the Office of State Review: a notice of intention to seek review with case information statement dated June 24, 2024 bearing a stamp of the school district clerk marking the document as received on June 24, 2024,<sup>6</sup> an affidavit of service of the notice of intention to seek review and case information statement notarized July 23, 2024 stating service was made on June 24, 2024 on the district clerk, a letter to the district clerk dated June 24, 2024 requesting a waiver of personal delivery, a notice of request for review dated July 22, 2024, a request for review dated July 22, 2024, an affidavit of verification regarding the notice of request for review notarized June 28, 2024, an affidavit of service notarized July 23, 2024 stating service was made on July 22, 2024 on a named district

---

<sup>6</sup> The filing also included a notice of intention to seek review with case information statement dated June 17, 2024; however, that earlier version of the document did not bear the district clerk's stamp.

senior office assistant, and a handwritten receipt signed by the district senior office assistant dated July 22, 2024.<sup>7, 8</sup>

According to the affidavit of service relating to the notice of request for review, on July 22, 2024, the parent personally served a district senior office assistant with a copy of the notice of request for review, a legal memorandum – request for review and SRO exhibits 1, 2, 3, and 4 (Parent Aff. of Service II). Based on the parent's affidavit of service itself, the parent did not personally serve the district in accordance with State regulation (id.).

In its answer, the district indicates that the appeal was not properly served because the parent personally served a district senior office assistant who had not been designated by the board of education to accept service. According to the declaration of the district senior office assistant on "the afternoon of July 22, 2024, [the parent] arrived at the [d]istrict's Special Education Offices, announced that she had documents to drop off that she said had been requested by the district and that she wanted a signed receipt from someone" (Answer Ex. 1 ¶ 3). The district senior office assistant also declared that she "did not know why [the parent] was dropping off the documents, was not asked whether [she] was authorized to accept service of legal papers on behalf of the [d]istrict and neither said nor did anything to suggest that [she] had any such authorization" (id. ¶ 4). The district senior office assistant further declared she sat with the parent, date stamped each document, created a hand-written list of the documents received, signed the list acknowledging her receipt of the documents and then took possession of the documents (id. ¶¶ 5-6). According to the parent in her reply, the district's website did not identify a person designated to accept service which leads the undersigned to believe the district's board of education has not designated extra persons to accept service other than those designated by State regulation (see 8 NYCRR 279.4[b]).

The parent in her reply confirms that she intended to serve the district clerk, she knew who the district clerk was based on the district's website, and that she directed the senior office assistant to give the documents to the district clerk (Reply ¶ 11). The parent also confirms in her reply that she had no knowledge of a district staff designated by the board of education to accept service and also that she was not aware the senior office assistant's ability to accept service on behalf of the district (id. ¶ 12). Moreover, the parent confirms the senior office assistant did not indicate she was authorized to accept service (id. ¶ 13).

Further, the parent in her reply confirms that she only sought to personally serve the district clerk and did not attempt personal service on the other district members who could also accept service (see Reply ¶¶ 9-13). As indicated above, other than the district clerk or someone designated by the board of education to accept service, the parent could have served a trustee or

---

<sup>7</sup> Both of the affidavits of service are notarized on July 23, 2024. For purposes of this decision, the affidavit of personal service which refers to service of the "Notice of Intention to Seek Review and Case Information Statement" by leaving it with the district clerk shall be referred to and cited as "Parent Aff. of Service I." The affidavit of personal service which refers to service of the "Notice of Request for Review", "SRO Ex 1, 2, 3, and 4" and "Legal Memorandum - Request for Review" by leaving it with a "Sr. Office Assistant" shall be referred to and cited as "Parent Aff. of Service II."

<sup>8</sup> The parent also submitted four proposed exhibits as additional evidence; however, as this matter is being disposed of on procedural grounds and those exhibits are provided as support for the parent's substantive arguments, they are not necessary and will not be considered on appeal.



member of the board of education of the district or the superintendent of schools (see 8 NYCRR 279.4[b]).<sup>9</sup>

Based on the parent's affidavit of service, the district's description of the manner in which service was attempted, and, the parent's statements in her reply, the parent did not properly serve the district as required by State regulation (see 8 NYCRR 279.4[b]; Application of a Student with a Disability, Appeal No. 20-020; Application of a Student with a Disability, Appeal No. 12-077; see also Appeal of Villanueva, 49 Ed. Dep't Rep. 54, Decision No. 15,956 [personal service under similar regulatory provisions upon unidentified receptionist found improper]; Appeal of Baker, 47 Ed. Dep't Rep. 280, Decision No. 15,696 [service upon the executive secretary to the superintendent found under similar regulatory provisions improper]).

While State regulations do not preclude a school district and a parent from agreeing to "waive" personal service of the request for review and it is generally permitted for parties to agree to service by an alternate delivery method, there is no indication in this instance that the district agreed to accept service by delivery of the request for review and supporting documents to the district senior office assistant.<sup>10</sup> Under these circumstances, given the deficiencies in compliance with Part 279 and the defect in service on the district, the appeal must be dismissed.<sup>11</sup>

---

<sup>9</sup> According to the parent she accessed the district's public website, which identified the district clerk's office and she served her papers at the address identified for the district clerk (Reply ¶ 9). However, the parent's assertion that the district did not have a list of people authorized to accept service is without merit, as State regulation identifies the individuals within a school district who may be served and the parent was aware that service had to be made on the district clerk as she had done with the notice of intention to seek review and case information statement (see Parent Aff. Of Service I). Additionally, the district website identified five board of education members and the superintendent of schools, as well as the district clerk, all of whom the parent could have personally served in compliance with State regulation.

<sup>10</sup> The parent's initial filing with the Office of State Review included a letter requesting waiver of personal service on the district dated June 24, 2024; however, there is nothing in the hearing record indicating that the district responded to that letter in any way.

<sup>11</sup> The district also argues that the parent's request for review should be rejected because it did not include a verification by the parent (see 8 NYCRR 279.7[b]). This suggests but does not confirm that a document lacking a verification was served upon respondent. However, the parent filed with the Office of State Review a signed affidavit of verification by the parent which was notarized June 28, 2024. This clouded matters further because despite this filing by the parent, the verification was notarized 24 days before the document being verified, as the request for review filed with the Office of State Review was dated July 22, 2024. This discrepancy calls into question what the parent verified, whether there was an earlier version of the request for review that the parent did properly verify, and whether that version was the same as what was ultimately filed in this matter. Given that the undersigned is dismissing the parent's appeal for failure to properly effect personal service on the district, it is not necessary to address this issue further. However, moving forward, counsel for the parent should ensure that he reviews Part 279 and conforms his practice accordingly, for while a singular failure to comply with the practice requirements of Part 279 may not warrant an SRO exercising his or her discretion to dismiss a request for review (8 NYCRR 279.8[a]; 279.13; see Application of a Student with a Disability, Appeal No. 16-040), an SRO may be more inclined to do so after repeated failures to comply with the practice requirements (see Application of a Student with a Disability, Appeal No. 16-060; see also Application of a Student with a Disability, Appeal No. 17-015; Application of a Student with a Disability, Appeal No. 16-040).

## **VII. Conclusion**

In accordance with the discussion above, I find that the parent's appeal must be dismissed for failure to properly initiate the appeal.

**THE APPEAL IS DISMISSED.**

**Dated:**           **Albany, New York**  
                          **September 9, 2024**

\_\_\_\_\_  
**JUSTYN P. BATES**  
**STATE REVIEW OFFICER**