



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 24-458

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

### **Appearances:**

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

Liz Vladeck, General Counsel, attorneys for respondent, by Brian J. Reimels, Esq.

## **DECISION**

### **I. Introduction**

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from a decision of an impartial hearing officer (IHO) which dismissed the parent's claims due to the parent and respondent (the district) exhibiting "a pattern of non-responsiveness." 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**

In a due process complaint notice dated April 24, 2024, the parent requested an impartial hearing alleging that the district denied the student a free appropriate public education (FAPE) for the 2022-23 and 2023-24 school years and sought tuition reimbursement for the student's unilateral placement at the Cooke School (Cooke) for those years (Due Process Comp.).

The parties proceeded to an impartial hearing before an IHO appointed by the Office of Administrative Trials and Hearings (OATH). On July 15, 2025, a prehearing conference was held where the parties advised that they were actively engaging in settlement negotiations and agreed to provide an update by email to the IHO by July 29, 2024 regarding the status of their settlement negotiations (Tr. pp. 1, 8-9). On July 29, 2024, the district's attorney team leader sent an email to

the IHO, the parent's attorney, and an OATH administrator to advise that the district's case attorney was unexpectedly sick so he was unavailable to provide a settlement update and would provide one when he returned to the office (July 29, 2024 email, sent at 9:48 a.m.). In an undated prehearing conference summary and order, the IHO noted that the parties appeared for a prehearing conference on July 15, 2024, that neither party complied with her directive to provide a status update by July 29, 2024, and that a hearing on the merits was scheduled for August 16, 2024 (Pre-Hr'g Order at p. 2).

By email dated August 13, 2024, the parent's attorney replied all to the district's July 29, 2024 email, stating that they believed that the IHO remained open to hearing about the status of the parties' settlement negotiations because the IHO did not respond (Aug. 13, 2024 email, sent at 11:11 a.m.). Shortly thereafter, by email dated August 13, 2024, the district's case attorney replied all to corroborate that the parties had been actively pursuing settlement of the matter and the attorney's search of "IHS" did not reveal a hearing on the merits scheduled for August 16, 2024 (Aug. 13, 2024 email, sent at 11:24 a.m.). However, the district case attorney received an email delivery failure message for the IHO address that was incorrectly typed on the previous communications, so the district case attorney corrected the IHO's email address, forwarded the email thread to the IHO at the corrected address, and requested that the IHO confirm receipt of the last message (Aug. 13, 2024 email, sent at 11:32 a.m.).

Next, the IHO sent an email to the parties, setting forth the IHO's order dismissing the matter due to the parties "exhibit[ing] a pattern of non-responsiveness" (Aug. 13, 2024 email, sent at 12:00 p.m.). The IHO's August 13, 2024 email listed dates that the parties failed to respond to the IHO's communication attempts, including that the parties failed to advise the IHO by July 29, 2024 regarding the status of settlement (*id.*).

In response, the attorney for the parent sent an email expressing concern about the matter being dismissed (Aug. 13, 2024 email, sent at 2:12 p.m.). The district's attorney team leader replied to the dismissal, advising that she had emailed the IHO about the case attorney's medical absence and confirming that the parties had been working toward settlement and the district was not requesting dismissal of the matter (Aug. 13, 2024 email, sent at 2:36 p.m.). The IHO responded to the district's attorney team leader, stating that she had never received an email from the district's attorney team leader and that the IHO was no longer engaged in the matter (Aug. 13, 2024 email, sent at 3:46 p.m.). The district's attorney team leader replied, admitting that she mistakenly omitted a letter from the IHO's email address in her initial email to the IHO on July 29, 2024 (Aug. 13, 2024 email, sent at 3:54 p.m.).

#### **IV. Appeal for State-Level Review**

The parent appeals, alleging that the IHO erred in dismissing the matter. The parent requests that the order of termination be vacated and that the matter be remanded for a hearing on the merits.

In an answer, the district alleges that the parent's appeal must be dismissed because personal service of the verified request for review was untimely.

## V. Discussion

As a threshold matter, it must be determined whether the parent's appeal should be dismissed for untimeliness.

An appeal from an IHO's decision to an SRO must be initiated by timely personal service of a notice of request for review and a verified request for review and other supporting documents upon a respondent (8 NYCRR 279.4[a]). A request for review must be personally served within 40 days after the date of the IHO's decision to be reviewed (*id.*). If the last day for service of any pleading or paper falls on a Saturday or Sunday, service may be made on the following Monday; if the last day for such service falls on a legal holiday, service may be made on the following business day (8 NYCRR 279.11[b]). State regulation provides an SRO with the authority to dismiss sua sponte an untimely request for review (8 NYCRR 279.13; *see e.g., Application of the Board of Educ.*, Appeal No. 17-100 [dismissing a district's appeal for failure to timely effectuate personal service on the parent]; *Application of a Student with a Disability*, Appeal No. 16-014 [dismissing a parent's appeal for failure to effectuate service in a timely manner]). However, an SRO may, in his or her sole discretion, excuse a failure to timely seek review within the 40-day timeline for good cause shown (8 NYCRR 279.13). The reasons for the failure must be set forth in the request for review (*id.*). "Good cause for late filing would be something like postal service error, or, in other words, an event that the filing party had no control over" (*Grenon v. Taconic Hills Cent. Sch. Dist.*, 2006 WL 3751450, at \*5 [N.D.N.Y. Dec. 19, 2006]; *see T.W. v. Spencerport Cent. Sch. Dist.*, 891 F. Supp. 2d 438, 441 [W.D.N.Y. 2012]).

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 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]).

Here, the parent failed to initiate the appeal in accordance with the timelines prescribed in Part 279 of State regulations. The record reflects that on August 13, 2024, at 12:00 p.m., the IHO sent her written decision and order via email to both parties, dismissing the case and explaining the reason and factual basis for her determination. Further, in a subsequent email on August 13, 2024, at 3:46 p.m., the IHO stated that she was no longer engaged in the matter. Accordingly, the IHO decision being appealed from was issued on August 13, 2024 and the parent acknowledges in her request for review that she is appealing from a "decision dated August 13, 2024" (Req. for Rev. at p. 1). The deadline for personal service of a request for review cannot be extended beyond 40 days as set forth in State regulations (see 8 NYCRR 279.4[a]). Therefore, for the parent's appeal to be timely, it would have had to have been served on the district by Monday, September 23, 2024.<sup>1</sup> The affidavit of service filed by the parent reflects that the request for review was served on October 19, 2024, 26 days after the statutory deadline for service had passed (Parent Aff. Of Service). Additionally, in the postscript of the request for review, the attorney for the parent explains that the case has been refiled and the attorney for the parent attempted to explain the situation to the IHO, hoping that the IHO would agree that the initial dismissal was in error (Req. for Rev. at p. 7). This explanation for the lateness of the appeal does not constitute good cause because the parent had the ability to submit a request for review in a timely manner but instead chose to seek alternative avenues of remedy.

Because the parent failed to properly initiate this appeal by effectuating timely service upon the district, and there is not sufficient good cause asserted in the request for review, in an exercise of my discretion, the appeal is dismissed (8 NYCRR 279.13; see Avaras v. Clarkstown Cent. Sch. Dist., 2019 WL 4600870, at \*11 [S.D.N.Y. Sept. 21, 2019] [upholding SRO's decision to dismiss request for review as untimely for being served nine hours late notwithstanding proffered reason of process server's error]; New York City Dep't of Educ. v. S.H., 2014 WL 572583, at \*5-\*7 [S.D.N.Y. Jan. 22, 2014] [upholding SRO's decision to reject petition as untimely for being served one day late]; B.C. v. Pine Plains Cent. Sch. Dist., 971 F. Supp. 2d 356, 365-67 [S.D.N.Y. 2013]; T.W., 891 F. Supp. 2d at 440-41; Kelly v. Saratoga Springs City Sch. Dist., 2009 WL 3163146, at \*4-\*5 [Sept. 25, 2009] [upholding dismissal of a petition served three days late]; Keramaty v. Arlington Cent. Sch. Dist., 05-CV-0006, at \*39-\*41 [S.D.N.Y. Jan. 25, 2006] [upholding dismissal of a petition served one day late], adopted [S.D.N.Y. Feb. 28, 2006]; Application of a Student with a Disability, Appeal No. 18-046 [dismissing request for review for being served one day late]; Mt. Vernon City Sch. Dist., 2019 WL 169380 [Sup. Ct. Westchester Cnty. Jan. 9, 2019] [upholding the dismissal of an SRO appeal as untimely, as calculation of the 40-day time period runs from the date of an IHO decision, not from date of receipt via email or regular mail], aff'd, 188 A.D.3d 889 [2d Dep't 2020]).

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<sup>1</sup> September 22, 2024 was the final day of the 40-day time period counting from August 13, 2024; however, as it was a Sunday, the parent had until the following Monday, September 23, 2024, to serve the district (8 NYCRR 279.11[b]).

## **VI. Conclusion**

Having found that the request for review must be dismissed because the parent failed to properly initiate the appeal, the necessary inquiry is at an end.

**THE APPEAL IS DISMISSED.**

**Dated:**           **Albany, New York**  
                      **December 5, 2024**

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**STEVEN KROLAK**  
**STATE REVIEW OFFICER**