



The University of the State of New York
The State Education Department
State Review Officer

No. 07-024

Application of a CHILD 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 Locust Valley Central School District

Appearances:

Frank X. Kilgannon, P.C., attorney for petitioner, Frank X. Kilgannon, Esq., of counsel

Ehrlich, Frazer & Feldman, attorney for respondent, Laura A. Ferrugiari, Esq., of counsel

DECISION

Petitioner appeals from the decision of an impartial hearing officer which denied his request to be reimbursed for his son's tuition costs at the Vincent Smith School for the 2005-06 school year. The appeal must be dismissed.

Petitioner's son was ten years old and in the fifth grade at the Vincent Smith School at the time the impartial hearing commenced in January 2006 (see Parent Ex. 3 at pp. 1, 2). At the time of the impartial hearing respondent was also providing the child with resource room services at the Nassau Learning Center (Tr. pp. 366-67; see IHO Ex. 16 at pp. 5-6). The Vincent Smith School has not been approved by the Commissioner of Education as a school with which school districts may contract to instruct students with disabilities (8 NYCRR 200.1[d], 200.7). The child's eligibility for special education as a student with an other health-impairment is not in dispute in this appeal (34 C.F.R. § 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

In response to the petition for review, respondent filed an answer and memorandum of law. Respondent's answer raises an affirmative defense asserting that the petition for review does not comply with section 279.4(a) of the Regulations of the Commissioner of Education because it, among other things, does not clearly indicate the reasons for challenging the impartial

hearing officer's decision. Petitioner has not filed a reply to the answer.¹ For the reasons set forth below, the petition for review must be dismissed.

Section 279.4(a) of the Commissioner's regulations provides, in pertinent part: "[t]he petition for review shall clearly indicate the reasons for challenging the impartial hearing officer's decision, identifying the findings, conclusions and orders to which exceptions are taken, and shall briefly indicate what relief should be granted by the State Review Officer to the petitioner" (8 NYCRR 279.4). The petition in this case fails to meet this requirement (see Application of a Child with a Disability, Appeal No. 06-097; Application of a Child with a Disability, Appeal No. 06-096; see also Application of the Bd. of Educ., Appeal No. 06-122).^{2,3} In this appeal, petitioner is represented by counsel. I concur with respondent that the statements in the petition for review are so unduly vague and ambiguous as to preclude respondent from effectively formulating a responsive answer. Other than asserting in general terms that he challenges the impartial hearing officer's decision and requests reversal, petitioner provides no particulars as to the reasons why he challenges the impartial hearing officer's decision. For example, one of petitioner's six general statements merely asserts that the impartial hearing officer "failed to comply with the rules and regulations of the Department of Education," without any further specification. To a significant extent, petitioner's counsel has repeated the very same general assertions that were reviewed in Application of a Child with a Disability, Appeal No. 06-097 and were found insufficient to comply with the provisions of 8 NYCRR 279.4(a). The text of petitioner's counsel's general assertions in the petition for review is also similar to a number of the general assertions reviewed in Application of the Bd. of Educ., Appeal No. 06-122 which were noted not to conform with 8 NYCRR 279.4(a). For the foregoing reasons, I find that the petition for review is deficient and that it should be dismissed (Application of a Child with a Disability, Appeal No. 06-097; see also Application of the Bd. of Educ., 06-122).

THE APPEAL IS DISMISSED.

Dated: Albany, New York
April 26, 2007

PAUL F. KELLY
STATE REVIEW OFFICER

¹ A petitioner may serve and file a reply for consideration by a State Review Officer "to any procedural defenses interposed by respondent or to any additional documentary evidence served with the answer" (see 8 NYCRR 279.6).

² The petition also does not comport with the form requirements of 8 NYCRR 279.8.

³ I also note that the record reflects that petitioner's specific objections to respondent's individualized education program (IEP) for the child's 2005-06 school year (see Joint Ex. 1) were not clearly identified at the impartial hearing below (see Dist. Ex. 3; Tr. pp. 30-35, 45-46, 1772-1806; IHO Ex. 9).