



# The University of the State of New York

## The State Education Department State Review Officer

No. 07-074

### **Application of the BOARD OF EDUCATION OF THE SMITHTOWN CENTRAL SCHOOL DISTRICT for review of a determination of a hearing officer relating to the provision of educational services to a child with a disability**

#### **Appearances:**

Law Offices of Peter G. Albert, attorney for petitioner, Peter G. Albert, Esq., of counsel

Roslyn Z. Roth, Esq., attorney for respondents

#### **DECISION**

Petitioner, the Board of Education of the Smithtown Central School District, appeals from the decision of an impartial hearing officer which found that it failed to offer an appropriate educational program to respondents' son and ordered it to reimburse respondents for their son's tuition costs at the New York Institute of Technology (NYIT) for the 2006-07 school year in its Vocational Independence Program. The appeal must be dismissed.

When the hearing commenced on November 20, 2006, the student was 19 years old and attending NYIT. The student's prior educational history is discussed in petitioner's prior appeal, Application of the Bd. of Educ., Appeal No. 07-055, and will not be repeated here in detail. Petitioner's prior appeal was dismissed for failure to personally serve the petition for review upon respondents and timely file a completed record.

In the instant case, petitioner filed a completed record and personally served the petition for review upon respondents, which seeks review of the same claims raised in Application of the Bd. of Educ., Appeal No. 07-055. Petitioner asserts that the petition in this appeal should be accepted for the reasons set forth in its reply in the prior appeal. In their answer, respondents contend that the decision in the prior appeal was final and binding upon the parties and that petitioner cannot reargue a matter that has previously been determined. Respondents also argue

that petitioner's appeal should be dismissed as untimely because it was not personally served within the time limits prescribed in the regulations of the Commissioner of Education. Respondents also assert that petitioner has failed to demonstrate good cause for accepting a late petition for review. In its reply to the procedural defenses raised in the answer, petitioner alleges that respondents failed to articulate any prejudice resulting from late service of the petition for review and argues that such late service should be accepted.

A State Review Officer's (SRO) decision is final and binding upon the parties unless appealed in a civil action (20 U.S.C. § 1415[i][1][a]; 34 C.F.R. §§ 300.514[d]; 300.516; 8 NYCRR 200.5[k][3]). Petitioner indicates that the same issues previously raised in Application of the Bd. of Educ., Appeal No. 07-055 are raised again in this appeal. The decision in Application of the Bd. of Educ., Appeal No. 07-055 is final and binding upon the parties unless one of the parties seeks judicial review. Furthermore, an application to reopen or reargue a prior decision of a state review officer is expressly prohibited by the regulations of the Commissioner of Education's regulations (8 NYCRR 276.8[d]).

Even if review were not foreclosed under the statutory and regulatory finality provisions, respondents correctly assert that the petition for review in this case is untimely. A petition for review submitted to an SRO must comply with the timelines specified in the Commissioner's regulations (see 8 NYCRR 279.2; Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at pp. \*5-\*6 [N.D.N.Y. Dec. 19, 2006]). The petition must be personally served upon the respondent within 35 days from the date of the impartial hearing officer's decision sought to be reviewed (8 NYCRR 279.2[b]). If the impartial hearing officer's decision has been served by mail upon a petitioner, the date of mailing and the four days subsequent thereto shall be excluded in computing the period (id.). An SRO, in his or her sole discretion, may excuse a failure to timely seek review within the time specified for good cause shown (8 NYCRR 279.13). The good cause for the failure to timely seek review must be set forth in the petition (id.).

Here, the impartial hearing officer's decision is dated April 6, 2007 and petitioner did not personally serve respondents until June 22, 2007 (Pet'r Affm. of Service). Accordingly petitioner's appeal is untimely (8 NYCRR 279.2[b]). I am unpersuaded that the unavailability of opposing counsel for purposes of securing consent for service by mail constitutes good cause for failure to personally serve the petition upon respondents in a timely manner (8 NYCRR 200.13).

**THE APPEAL IS DISMISSED.**

**Dated:** Albany, New York  
July 13, 2007

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**PAUL F. KELLY**  
**STATE REVIEW OFFICER**