



# The University of the State of New York

## The State Education Department State Review Officer

No. 08-022

**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 [REDACTED] School District**

### **Appearances:**

Mevec & Cognetti, attorneys for petitioner, Ralph A. Cognetti, Esq.

Ferrara, Fiorenza, Larrison, Barrett & Reitz, PC, attorneys for respondent, Susan T. Johns, Esq., of counsel

### **DECISION**

Petitioner (the parent) appeals from a decision of an impartial hearing officer which determined that the educational program respondent's (the district) Committee on Special Education (CSE) had recommended for her daughter for the 2007-08 school year was appropriate. The appeal must be dismissed.

Initially, several procedural matters must be addressed. The district asserts three affirmative defenses in its answer, including that the parent failed to serve a notice of intention to seek review upon the district, failed to verify the petition, and failed to state a claim or the relief sought in the petition. The parent has not filed a reply to these affirmative defenses as provided for in 8 NYCRR 279.6.<sup>1</sup>

First, the district asserts that the parent failed to submit a notice of intention to seek review pursuant to 8 NYCRR 279.2. The purpose of a notice of intention to seek review is to ensure that the hearing record is provided to a State Review Officer (see Application of a Child with a Disability, Appeal No. 05-106; Application of a Child with a Disability, Appeal No. 02-009). While the record reflects that the parent did not serve a notice of intention to seek review

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<sup>1</sup> 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" (8 NYCRR 279.6).

upon the district, the hearing record in this matter was provided to the Office of State Review in a timely manner. Therefore, the parent's failure to serve the notice of intention to seek review does not afford a sufficient basis to dismiss the appeal on that ground (see Application of a Child with a Disability, Appeal No. 07-123).

Second, the district correctly asserts that the parent failed to verify the petition as required by 8 NYCRR 279.7. Here, the parent has failed to correct the deficiency (see Application of a Child with a Disability, Appeal No. 05-045; see also Application of a Child with a Disability, Appeal No. 02-011). In addition, the parent's affidavit of service of the petition indicates that the petition was served upon the district by mail, in violation of 8 NYCRR 275.8(a) which requires personal service, unless permission for an alternative method of service is granted by a State Review Officer (see Application of the Dep't of Educ., Appeal No. 08-006; Application of the Dep't of Educ., Appeal No 05-082).<sup>2,3</sup>

Third, the district asserts that the petition for review failed to clearly indicate the reasons for challenging the impartial hearing officer's decision and failed to indicate what relief should be granted by a State Review Officer as required by 8 NYCRR 279.4(a) of the State regulations. Section 279.4(a) 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."

In this appeal, the parent is represented by counsel. The statements in the petition are unduly vague and ambiguous as to preclude the district from effectively formulating a responsive answer. Other than asserting in general terms that the parent seeks review of the impartial hearing officer's decision, the petition does not provide sufficient particulars as to the reasons why she challenges the impartial hearing officer's decision. For example, the parent alleges in general terms that the impartial hearing officer "ignored all the evidence to support the Petitioner." The parent also asserts in her petition that the district is denying the student's "civil and statutory rights," without any further specification. The petition for review is required to "clearly indicate the reasons for challenging the impartial hearing officer's decision" (8 NYCRR 279.4[a]). Here, the petition fails to identify the findings, conclusions, and orders to which exceptions are taken and does not specify what relief is requested in contravention of State regulations (see Application of a Child with a Disability, Appeal No. 07-112; Application of a Child with a Disability, Appeal No. 06-096).<sup>4</sup>

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<sup>2</sup> There is nothing in the hearing record showing that the district waived personal service (see Application of the Bd. of Educ., Appeal No. 05-067; Application of the Bd. of Educ., Appeal No. 04-058).

<sup>3</sup> Part 279 of the Regulations of the Commissioner of Education governs the practice on review of hearings by a State Review Officer. Section 279.1(a) provides that the provision of Parts 275 and 276 shall govern the practice on such reviews, except as provided in Part 279.

<sup>4</sup> In addition to not comporting with 279.4, the two-page petition fails to reference the hearing record as required by 8 NYCRR 279.8(b). State regulation directs that "[t]he petition, answer, reply and memorandum of law shall each reference the record on appeal, identifying the page number in the hearing decision and transcript, the exhibit number or letter and, if the exhibit consists of multiple pages, the exhibit page number" (see Application of a Child with a Disability, Appeal No. 08-003 [dismissing a petition that inter alia did not reference the hearing record]). Also, the parent did not submit a memorandum of law in support of her petition (8 NYCRR 279.8).

For the foregoing reasons, the petition for review is deficient and fails to meet the requirements set forth in the State regulations. I will therefore exercise my discretion under 8 NYCRR 279.8(a), and dismiss the petition (8 NYCRR 279.4; Application of a Child with a Disability, Appeal No. 07-112; Application of a Child with a Disability, Appeal No. 07-024; 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).

**THE APPEAL IS DISMISSED.**

**Dated:** Albany, New York  
April 23, 2008

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