



The University of the State of New York

The State Education Department State Review Officer

No. 08-143

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the [REDACTED] Department of Education

Appearances:

Michael Best, Special Assistant Corporation Counsel, attorney for respondent, Karyn R. Thompson, Esq., of counsel

DECISION

Petitioner (the parent) appeals from the decision of an impartial hearing officer which denied her request that respondent (the district) reimburse her son's tuition costs at the Yeshiva Education for Special Students (YESS) for the 2007-08 school year. The appeal must be dismissed.

At the time of the impartial hearing in June 2008, the student was attending a special class at YESS with approximately nine other students (Parent Ex. C). YESS has not been approved by the Commissioner of Education as a school with which districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education services as a student with a learning disability is not in dispute in this appeal (Parent Ex. E at p. 1; see 34 C.F.R. § 300.8[c][10]; 8 NYCRR 200.1[zz][6]).

At the outset, I will address two procedural matters. First, the parent acknowledges that her petition for review was not timely served in accordance with State regulations (8 NYCRR 279.2[b]). The parent requests leave to file a late petition for review based on her assertion that she was hospitalized while overseas. In its answer, the district opposes the parent's request, arguing that the parent's reason for the delay in initiating her appeal is vague and conclusory, and consequently, the parent has failed to establish good cause. In her reply, the parent asserts that the answer should be stricken as untimely because the district used a private carrier instead of the United States Postal Service to serve the answer. The parent also alleges in her reply that she

departed overseas on September 22, 2008, was "hospitalized while there, undergoing surgery as well" and returned on November 19, 2008.

A petition for review submitted to a State Review Officer must comply with the timelines specified in the State 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 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 petitioners, the date of mailing and the four days subsequent thereto shall be excluded in computing the period (id.). A State Review Officer, 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.).

In this case, the impartial hearing officer's decision was dated September 24, 2008 and the petition for review was not served upon respondent until November 28, 2008 (IHO Decision at p. 7). Although the petition for review and reply contain assertions that the parent was hospitalized abroad, the parent sets forth no additional information to support her request, such as the length of time she was actually hospitalized while overseas, the extent to which her illness or injury actually precluded her from initiating the appeal or other facts that are relevant to determining the circumstances leading to the delay. Consequently, I find that the reasons for her delay in initiating the appeal set forth by the parent are too vague to establish good cause and therefore the petition must be dismissed as untimely (8 NYCRR 279.4[b]; 279.13).¹

With regard to the second procedural matter, the district also asserts that the parent's petition for review fails to set forth the parent's reasons for appealing. A petition for review must comply with State regulations, which provide in pertinent part that: "[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[a]; see 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).²

¹ Although the parent requests that the district's answer be stricken, Part 275 of the State regulations was amended to provide that "[s]ervice by private express delivery shall be complete upon delivery of the pleading or paper enclosed in a properly addressed wrapper to an employee or agent of such private express delivery service or by deposit of such pleading or paper, properly addressed and wrapped, in a depository of such private express delivery service" (8 NYCRR 275.8[b] [eff. Dec. 11, 2008]). The district's declaration of service reveals that service of the answer was timely because service was complete when the answer was sent to the parent via overnight delivery service on January 21, 2009 (Dist. Decl'n. of Service dated Jan. 21, 2009). Accordingly I decline to strike the district's answer.

² The New York State Education Department's Office of State Review maintains a website at www.sro.nysed.gov. The website explains in detail the appeals process and includes State Review Officer decisions since 1990.

In this case, the parent alleges in the petition for review that the district did not provide an appropriate placement and the parent therefore enrolled the student at YESS in September 2007. According to the parent, the district revised its placement recommendation in October 2007 and agreed with the parent that the student required placement in a special class. With regard to her contentions on appeal, the parent asserts that "despite the merits of the parent's request, and the [district's] default, the IHO denied the parent's request" (Pet. ¶ 16).³ The parent also asserts that "[a]s set forth herein and supported by the hearing transcript and exhibits as well, pursuant to the IDEA, the parents are entitled to tuition reimbursement" (Pet. ¶ 17). Although the parent's petition indicates that she seeks remedies in the form of reversal of the impartial hearing officer's decision and an award of tuition reimbursement for the 2007-08 school year, she does not identify in her petition any factual findings or conclusions in the impartial hearing officer's decision with which she disagrees. The petition for review does not provide sufficient basis to infer any information with respect to the parent's position aside from her general disagreement with the impartial hearing officer's ultimate conclusion that the district offered the student a free appropriate public education and her resulting decision to deny the parent's tuition reimbursement claim (see IHO Decision at pp. 6-7). I find that such general allegations are too vague to satisfy the pleading requirements set forth in State regulations (8 NYCRR 279.4[a]), and therefore, the petition for review must also be dismissed as insufficient.

I have examined the parties remaining contentions and find that it is unnecessary to address them in light of my decisions herein.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
February 4, 2009**

**PAUL F. KELLY
STATE REVIEW OFFICER**

³ At the impartial hearing, the parent's counsel moved to preclude the district from asserting a position regarding whether they had provided a free appropriate education to the student (FAPE) because the district did not provide a response to the due process complaint notice (Parent Ex. A).