



# The University of the State of New York

## The State Education Department State Review Officer

No. 08-041

### **Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability**

#### **Appearances:**

Michael Best, Special Assistant Corporation Counsel, attorney for petitioner, G. Christopher Harriss, Esq., of counsel

Skyer, Castro, Foley and Gersten, attorney for respondents, Gregory Cangiano, Esq., of counsel

#### **DECISION**

Petitioner (the district), appeals from the decision of an impartial hearing officer which ordered it to reimburse respondents (the parents) for their daughter's tuition costs at the Bay Ridge Preparatory School (Bay Ridge) for the 2007-08 school year. The appeal must be sustained in part.

The underlying facts and circumstances in the instant appeal are the same as those presented in Application of the Dep't of Educ., Appeal No. 08-024. The district commenced this appeal as a result of an amended decision issued by the impartial hearing officer on March 31, 2008. The district requests a ruling that the impartial hearing officer's March 31, 2008 decision be declared null and void. In the alternative, the district requests a finding that it offered the student a free appropriate public education (FAPE) during the 2007-08 school year, that Bay Ridge is not tailored to meet the student's special education needs and that equitable considerations weigh against the parents.

For the reasons explained in Application of the Dep't of Educ., Appeal No. 08-024, the impartial hearing officer lacked the authority to issue an amended decision in this matter after issuing a prior decision on the same facts on February 15, 2008. Accordingly, the decision dated March 31, 2008 is null and void. Regarding the district's alternative contention that the impartial hearing officer erred by awarding the parents' tuition reimbursement for the student's 2007-08 school year, as determined in Application of the Dep't of Educ., Appeal No. 08-024, a review of the hearing record demonstrated that the district failed to sustain its burden to show that it offered

the student a FAPE, that the parents established that Bay Ridge was an appropriate program, and that the equities weigh in favor of the parents.

I have considered the parties' remaining contentions and find that I need not reach them in light of my determinations.

**THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.**

**IT IS ORDERED** that the impartial hearing officer's decision dated March 31, 2008 is annulled in its entirety.

**Dated:**            **Albany, New York**  
                         **June 11, 2008**

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