



The University of the State of New York

The State Education Department State Review Officer

No. 08-046

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 New York City Department of Education

Appearances:

Michael Best, Special Assistant Corporation Counsel, attorney for respondent, Tracy Siligmuller, Esq., of counsel

DECISION

Petitioner (the parent) appeals from the decision of an impartial hearing officer which granted the parent's request for reimbursement for independent educational evaluations (IEE) for the student and ordered respondent (the district) to reimburse the parent for the cost of the IEEs. The appeal must be dismissed.

The student's eligibility for special education and related services as a student with autism is not in dispute in this appeal (Dist. Exs. 7 at p. 1; 8 at p. 1; see 34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

In a due process complaint notice dated December 6, 2007, the parent requested an impartial hearing seeking reimbursement for IEEs that were conducted of the student and submitted to the district's CSE (Dist. Ex. 2). An impartial hearing convened on January 24, 2008 and concluded on April 11, 2008. By decision dated April 28, 2008, the impartial hearing officer granted the parent's request for reimbursement for the IEEs (IHO Decision at p. 3).

Subject to certain limitations, federal and State regulations provide that a parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school district (34 C.F.R. § 300.502[a], [b]; 8 NYCRR 200.5[g][1]). Specifically, if a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure that either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 C.F.R. § 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]; see, e.g., R.L. v. Plainville Bd. of

Educ., 363 F. Supp. 2d. 222, 234 [D. Conn. 2005][finding parental failure to disagree with an evaluation obtained by a public agency defeated parent's claim for IEE at public expense]; A.S. v. Norwalk Bd. of Educ., 183 F. Supp. 2d 534, 549 [D. Conn. 2002][upholding order of reimbursement where district failed to demonstrate that its evaluation was appropriate]). If an impartial hearing officer finds that a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense (34 C.F.R. § 300.502[b][3]; 8 NYCRR 200.5[g][1][v]; DeMerchant v. Springfield Sch. Dist., 2007 WL 2572357 at *6 [D. Vt. Sept. 4, 2007]; Application of a Student with a Disability, Appeal No. 08-039; Application of a Child with a Disability, Appeal No. 07-126; Application of a Child with a Disability, Appeal No. 06-067; Application of the Bd. of Educ., Appeal No. 05-009; Application of a Child with a Disability, Appeal No. 04-082; Application of a Child with a Disability, Appeal No. 04-027). In addition, an unnecessary delay in the district seeking an impartial hearing to contest a parent's request for an IEE may result in district liability for an IEE at public expense (Pajaro Valley Unified Sch. Dist. v. J.S., 2006 WL 3734289 [N.D. Cal. Dec. 15, 2006] [finding the district liable to pay for an IEE due to nearly three months unnecessary delay in requesting an impartial hearing]; but see L.S. v. Abington Sch. Dist., 2007 WL 2851268 at *9, *10, *13 [E.D. Pa. Sept. 28, 2007] [six week delay in the district requesting an impartial hearing to dispute parent's request for IEE reimbursement is consistent with procedures and intent of IDEA where the district first attempted to resolve the matter]; see also Letter to Sapperstone, 21 IDELR 1127 [OSEP 1994] [there is no specific time period within which a district must request an impartial hearing to dispute a parent's request for IEE reimbursement, but an impartial hearing request may not be delayed such that it interferes with a free appropriate public education]).

In this case, the impartial hearing officer awarded reimbursement to the parent for a speech-language evaluation and an occupational therapy (OT) evaluation (IHO Decision at p. 8), after concluding that the district unnecessarily delayed its request for an impartial hearing to dispute the parent's request for IEE reimbursement. The impartial hearing officer further ordered that the district reimburse the parent for the cost of an audiological evaluation, but only after the parent provides the district with proof of payment; and the impartial hearing officer ordered reimbursement for a comprehensive neuropsychiatry reevaluation of the student, but only after the parent delivers a copy of the completed reevaluation report to the district within 30 days of the order and submits proof of payment (id.).

The parent appeals,¹ contending among other things, that he has not received reimbursement for the IEEs under the impartial hearing officer's order. The parent seeks a decision from a State Review Officer ordering reimbursement for the IEEs.

In its answer, the district asserts that the parent is not an aggrieved party and as such, is not entitled to appeal to a State Review Officer.² The district does not appeal the impartial hearing officer's decision that it reimburse the parent for the IEEs; therefore, that decision is final and binding on the parties (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[k]; Application of the Dep't of Educ., Appeal No. 08-025; Application of a Child with a Disability, Appeal No. 07-050; Application of a Child with a Disability, Appeal No. 07-026; Application of a Child Suspected of

¹ The parent filed two other petitions for review concurrently with this matter (see Application of a Student with a Disability, Appeal No. 08-047; Application of a Student with a Disability, Appeal No. 08-048).

² The district submitted an affidavit of service stating that the parent had been served with the answer.

Having a Disability, Appeal No. 06-092; Application of a Child with a Disability, Appeal No. 06-085; Application of a Child with a Disability, Appeal No. 04-024; Application of a Child with a Disability, Appeal No. 03-108; Application of a Child with a Disability, Appeal No. 02-100).

I agree with the district that the parent does not have standing to appeal. "[T]he administrative appeal process is available only to a party which is 'aggrieved' by an IHO's determination" (Cosgrove v. Bd. of Educ., 175 F. Supp. 2d 375, 385 [N.D.N.Y. 2001]). A party aggrieved by an impartial hearing officer's decision may appeal to a State Review Officer (see 34 C.F.R. § 300.514[b]; 8 NYCRR 200.5[k]; see also Mackey v. Bd. of Educ., 386 F. 3d 158, 160 [2d Cir. 2004]; Application of a Child Suspected of Having a Disability, Appeal No. 05-047; Application of the Bd. of Educ., Appeal No. 04-016; Application of a Child with a Disability, Appeal No. 02-007; Application of a Child with a Disability, Appeal No. 99-029). "Generally, the party who has successfully obtained a judgment or order in his favor is not aggrieved by it, and, consequently, has no need and, in fact, no right to appeal" (Parochial Bus Sys., Inc. v. Bd. of Educ., 60 N.Y.2d 539, 544 [1983]). Further, a State Review Officer is not required to determine issues which are no longer in controversy or to review matters which would have no actual effect on the parties (Application of a Child with a Disability, Appeal No. 07-092; Application of a Child with a Disability, Appeal No. 05-018; Application of a Child with a Disability, Appeal No. 02-011; Application of a Child with a Disability, Appeal No. 98-73; Application of a Child Suspected of Having a Disability, Appeal No. 95-60). In the instant case, the impartial hearing officer awarded the parent the relief he sought at the impartial hearing; the reimbursement for the IEEs that he had obtained for the student. Therefore, the parent is not an aggrieved party and has no right to appeal. Accordingly, I will dismiss the petition.

Lastly, it appears from the hearing record that the reimbursement due to the parent by the district has not yet been forwarded to the parent. The district is not contesting its obligation to reimburse the parent. I also note that it appears that the parent has not complied with the impartial hearing officer's order to submit documentation and proof of payment to the district. I remind the parent to submit the documentation and proof of payment ordered by the impartial hearing officer to the district so that he may obtain reimbursement. Such documentation should be submitted to the district within thirty days from the date of this decision.

I have considered the parties' remaining contentions, including the parent's assertion that he was not properly served with the district's answer, and find that I need not reach them in light of my decision.

THE APPEAL IS DISMISSED

Dated: Albany, New York
August 8, 2008

PAUL F. KELLY
STATE REVIEW OFFICER