



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 11-062

### **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, Lisa R. Khandhar, Esq., of counsel

#### **DECISION**

Petitioner (the parent) appeals from a decision of an impartial hearing officer which determined that the parent's due process complaint notice was insufficient and dismissed the complaint with prejudice. The appeal must be sustained.

At the time of the filing of the parent's original due process complaint notice in March 2011 and amended complaint in April 2011, the student was classified as a student with autism, and his eligibility for special education programs and services is not in dispute in this appeal (34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1]).

#### **Procedural History**

On March 24, 2011, the parent filed a due process complaint notice with respondent (the district) requesting an impartial hearing (Parent Ex. A).<sup>1,2</sup> On April 7, 2011, the district responded

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<sup>1</sup> The parent attaches to his petition five additional exhibits for consideration on appeal that were not labeled. The district does not object to the consideration of these exhibits. For convenience, the Office of State Review has marked these exhibits as Parent Exhibits A-E. Likewise, the district attaches five additional exhibits to its answer, which the parent does not object to. These exhibits are labeled District Exhibits 1-5 and will be referenced as such in this decision. Where the district's and the parent's exhibits are repetitious, this decision will refer to the parent's exhibits only.

<sup>2</sup> The parent's due process complaint notice was dated March 24, 2011; however, other evidence in the hearing record states that the complaint was not filed with the district until April 1, 2011 (compare Dist. Ex. 4 at p. 2, and Dist. Ex. 5, with Parent Ex. A). This issue is not further clarified in the hearing record.

to the parent's due process complaint notice, challenging its sufficiency and seeking dismissal (Dist. Ex. 2). By decision dated April 12, 2011, the impartial hearing officer found the parent's due process complaint notice to be insufficient; however, the parent was granted leave to amend the due process complaint notice "within 14 days (April 26, 2011)" (see Parent Ex. D at p. 2). On April 20, 2011, the parent filed an amended due process complaint notice (Parent Ex. B). By decision dated May 6, 2011, the impartial hearing officer found, without explanation, that the amended due process complaint notice was insufficient (Dist. Ex. 4 at p. 2).<sup>3</sup> The impartial hearing officer barred the parent "from filing any [d]ue [p]rocess [c]omplaint [n]otice...that raises any allegation or seeks any relief" set forth "in words or in substance" in the complaint (id. at pp. 2-3).

### **Appeal for State-Level Review**

The parent appeals. In his petition, the parent objects to the impartial hearing officer's dismissal of his amended due process complaint notice for insufficiency, and asserts that the parent strictly adhered to the rules and regulations regarding the impartial hearing process. The parent requests the relief set forth in his amended due process complaint notice.

In its answer, the district agrees with the parent that the impartial hearing officer erred in dismissing the parent's amended due process complaint notice with prejudice, and doing so without providing a rationale for the determination that the complaint lacked the required sufficiency. The district also asserts that it would be premature to make a substantive determination on the merits of the parent's case. The district agrees that the impartial hearing officer's determination should be annulled, and it requests that the parent be allowed to refile a due process complaint notice which comports with State and federal regulations.

### **Discussion and Conclusion**

The parties agree that the impartial hearing officer erred in dismissing the parent's amended due process complaint notice without an explanation as to why the complaint lacked the required sufficiency. I note that the hearing record does not contain the district's written challenge to the sufficiency of the amended due process complaint notice (see 8 NYCRR 200.5[i][6]). Accordingly, I find no reason under these circumstances to uphold the impartial hearing officer's determination regarding the sufficiency of the parent's amended due process complaint notice. Moreover, I have reviewed the parent's amended due process complaint notice and find that, contrary to the conclusion of the impartial hearing officer, it meets the requirements set forth in the Individuals with Disabilities Education Act (IDEA) for the sufficiency of a complaint (20 U.S.C. § 1415[c][2][A]; see 34 C.F.R. § 300.508[a][2][b]; 8 NYCRR 200.5[i][1]). Accordingly upon remand and in the exercise of my discretion, the district shall appoint a new impartial hearing officer who shall convene an impartial hearing and ensure that each party has the opportunity to

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<sup>3</sup> An impartial hearing officer's decision "shall set forth the reasons and the factual basis for the determination" (8 NYCRR 200.5 [j][5][v]). In this case, the impartial hearing officer, without explanation, found the parent's amended due process complaint notice insufficient and dismissed the action (Dist. Ex. 4). I note that the Official Analysis of Comments the federal regulations provide that if a due process complaint notice is dismissed for lack of sufficiency, the impartial hearing officer's decision "will identify how the notice is insufficient" in order to allow filing party the ability to file a sufficient amended due process complaint notice (Due Process Complaint, 71 Fed. Reg. 46698).

present evidence and testimony, and shall render a written decision that comports with State regulations (see 8 NYCRR 200.5[j][5][v]).

I remind the parties and the impartial hearing officer that a prehearing conference may assist in ensuring that: all parties clearly understand the issues that are being raised by the party who requested the hearing; which facts the parties agree upon; which facts are in dispute; and what issues the impartial hearing officer needs to hear evidence on and decide (8 NYCRR 200.5[j][3][xi]). Finally, I urge both parties in this matter to avail themselves of the resolution process set forth in the federal and State regulations (34 C.F.R. § 300.510; 8 NYCRR 200.5[j][2]).

**THE APPEAL IS SUSTAINED.**

**IT IS ORDERED** that the impartial hearing officer's determination dated May 6, 2011 is hereby annulled in its entirety; and

**IT IS FURTHER ORDERED** that, unless the parties otherwise agree, the matter is remanded to a new impartial hearing officer who shall convene an impartial hearing regarding the parent's claims raised in his amended due process complaint notice upon the conclusion of the resolution period, which shall be 30 days from the date of this decision.

**Dated:**            **Albany, New York**  
                         **June 24, 2011**

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**JUSTYN P. BATES**  
**STATE REVIEW OFFICER**