



The University of the State of New York

The State Education Department State Review Officer

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No. 11-090

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, attorneys for respondent, Diane da Cunha, 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 without prejudice. The appeal must be sustained in part.

Procedural History

On or about June 2, 2011, the parent filed a due process complaint notice with respondent (the district) requesting an impartial hearing (Joint Ex. 1; see IHO Decision at p. 1).¹ By e-mail dated June 7, 2011, the district responded to the parent's due process complaint notice, challenging its sufficiency and seeking dismissal because it did not include the name of the school the student was attending and a proposed solution to the alleged problem (IHO Decision at p. 1; see 34 C.F.R. § 300.508[b][3], [5], [d]; 8 NYCRR 200.5[i][1][iii], [v], [6]).

By decision dated June 10, 2011, the impartial hearing officer found the parent's due process complaint notice to be insufficient because it failed to state the name of the school the student was attending and "a description of the problem that relates to the student's special education placement" (IHO Decision at p. 1). Therefore, the impartial hearing officer dismissed the parent's due process complaint notice "without prejudice for the parent to file a complaint with the required information" (id.).

¹ An impartial hearing was not held on the merits of the parent's claims and the only exhibit submitted as part of the record for review is the parent's due process complaint notice, which will be referred to as Joint Ex. 1.

Appeal for State-Level Review

The parent filed a petition, objecting to the impartial hearing officer's dismissal of her due process complaint notice on sufficiency grounds. The parent identifies in her petition the name of the student's school. The parent also reiterates the claims made in her due process complaint notice and seeks the relief set forth in that complaint.

In its answer, the district requests that the parent's appeal be dismissed. The district asserts that the parent failed to state a claim under the Individuals with Disabilities Education Act (IDEA), that the parent's claims are barred by the statute of limitations, and that a resolution agreement signed by the parent on April 4, 2011 precludes the parent from seeking the requested relief.

Discussion

Sufficiency of the Due Process Complaint Notice

I note that neither the district's e-mail challenge to the sufficiency of the parent's due process complaint notice nor evidence showing that the parent was provided written notice of the sufficiency challenge was included in the hearing record in this case. A review of the parent's due process complaint notice reveals that the impartial hearing officer was correct in finding that the complaint was insufficient because the parent did not identify the school that the student was attending (Joint Ex. 1; see IHO Decision at p. 1; see also 34 C.F.R. § 300.508[b][3]; 8 NYCRR 200.5[i][1][iii]). Regarding the impartial hearing officer's determination that the complaint failed to state "a description of the problem that relates to the student's special education placement," the regulations provide that a due process complaint notice must state a "description of the nature of the problem of the child relating to the proposed or refused initiation or change . . ." (34 C.F.R. § 300.508[b][5]; 8 NYCRR 200.5[i][1][iv]; see IHO Decision at p. 1). Although the parent did not state her claim with specificity, I find that her due process complaint notice can reasonably be read as challenging the student's special education placement and alleged facts regarding her request that the student be placed in a different collaborative team teaching classroom (Joint Ex. 1). Therefore, the complaint was sufficient in that regard and the impartial hearing officer erred in finding otherwise.

Other Matters

With regard to the district's assertion that the parent's petition is barred by a resolution agreement signed by the parties on April 4, 2011 (Answer Ex. C; see 34 C.F.R. § 300.510; 8 NYCRR 200.5[j][2]), it appears that the April 2011 resolution agreement relates to a different due process complaint notice than the one at issue in this proceeding and the district did not include the prior complaint as part of the administrative record.² Therefore, I am not persuaded by the district's argument. Next, the district alleges in its answer that the parent does not state a claim under the IDEA and that her claims are barred by the IDEA's two year statute of limitations. As no impartial hearing was conducted, the parent did not have the opportunity to be heard, and there is inadequate evidence to review the district's allegations, I express no opinion regarding these

² I note that a different impartial hearing request number is identified in the April 2011 resolution agreement than what is indicated in the June 10, 2011 impartial hearing officer's decision (compare Answer Ex. C at p. 1, with IHO Decision).

allegations; however, I note that the district is not precluded from raising these defenses below when an impartial hearing is convened in accordance with this decision.

Conclusion

In addition to the above, I note that although the parent failed to provide the name of the school that the student attended in her due process complaint notice, that defect has been remedied in her petition and the district is now on notice of this information. Accordingly, at this juncture it is appropriate for the parties to proceed to an impartial hearing to allow the parent the opportunity to be heard on the placement issue identified in her complaint. The impartial hearing officer is not precluded from convening a prehearing conference for further clarification regarding the specifics of the parent's challenge to the placement (see 8 NYCRR 200.5[j][3][iii], [xi]). Additionally, as noted above, the district is not precluded from raising defenses, including those argued in its answer, at the impartial hearing nor is the impartial hearing officer precluded from making a determination regarding whether the parent has asserted a claim for which relief may be granted under the IDEA.³

I have considered the parties' remaining contentions and find that it is unnecessary to address them in light of my decision.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that the portion of the impartial hearing officer's decision dated June 10, 2011 which determined that the parent's complaint failed to describe the nature of the problem is annulled; and

IT IS FURTHER ORDERED that unless the parties otherwise agree, this matter is remanded to the same impartial hearing officer to conduct an impartial hearing within 30 days of the date this decision; and

IT IS FURTHER ORDERED that if the impartial hearing officer who issued the June 10, 2011 impartial hearing officer decision is unavailable to conduct an impartial hearing, a new impartial hearing officer be appointed; and

IT IS FURTHER ORDERED that the district shall provide the parent with a translation of this decision in her native language.

Dated: **Albany, New York**
September 15, 2011

JUSTYN P. BATES
STATE REVIEW OFFICER

³ As a general matter, although the use of summary disposition procedures akin to those used in judicial proceedings are permissible under the IDEA, they should be used with caution and are appropriate in instances in which the parties have had a meaningful opportunity to present evidence and the nonmoving party is unable to identify any genuine issue of material fact (*J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 69 [2d Cir. 2000]; *Application of a Student Suspected of Having a Disability*, Appeal No. 11-044; *Application of the Bd. of Educ.*, Appeal No. 10-014; *Application of the Bd. of Educ.*, Appeal No. 05-007; *Application of a Child Suspected of Having a Disability*, Appeal No. 04-059; *Application of a Child with a Disability*, Appeal No. 04-018).