The University of the State of New York

The State Education Department
State Review Officer
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No. 11-103

Application of a STUDENT WITH A DISABILITY, by his parents, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the East Ramapo Central School District

Appearances:
New York Legal Assistance Group, attorneys for petitioners, Yisroel Schulman, Esq., of counsel

Minerva & D'Agostino, PC, attorneys for respondent, Roslyn Roth, Esq., of counsel

DECISION

Petitioners (the parents) appeal from the decision of an impartial hearing officer which denied their request to be reimbursed for their son's tuition costs at a nonpublic special education program (the NPS) for the 2010-11 school year. The appeal must be dismissed.

During the 2010-11 school year, the student was parentally placed at the NPS in an ungraded special education classroom where he received speech-language therapy, occupational therapy (OT), and the services of a 1:1 aide (Tr. pp. 319, 423-24, 466, 486-87, 712-13, 847; Dist. Ex. 7 at pp. 1-2; Parent Ex. M at p. 1). The Commissioner of Education has not approved the NPS as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7).[1] The student's eligibility for special education and related services as a student with an other health-impairment is not in dispute in this proceeding (see 34 C.F.R. § 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

Background

Because the student's educational placement is not at issue, the parties' familiarity with the student's educational history is presumed and the relevant background will be recited only briefly. The student has received various diagnoses, including an anxiety disorder, an obsessive

[1] The NPS was co-located with a yeshiva within the district during the 2010-11 school year (Tr. pp. 319-20, 471-72, 497-99; Dist. Exs. 7 at p. 1; 19; Parent Exs. B; G; L at p. 1; O at p. 2).

compulsive disorder, speech dyspraxia, a sensory integration disorder, and an expressive language disorder (Tr. pp. 771, 777-78, 798; Dist. Exs. 20; 21 at p. 3; Parent Ex. N at p. 3).

In August 2009, the district convened a committee on special education (CSE) to develop an individualized education program (IEP) for the student for the 2009-10 school year (Dist. Ex. 1). The IEP recommended that the student be placed in an 8:1+2 special class in a district school with a 1:1 aide, speech-language therapy, OT, and parent training (id. at pp. 1-2). The parents rejected the August 2009 IEP indicating that they "agree[d] with the class size, but rejected the composition of the class," and stating that they "were considering a Yeshiva" in a neighboring district (id. at p. 5; see Tr. pp. 121-22, 590, 594). For the 2009-10 school year, the parents placed the student at the NPS, a school which they had founded, and which at that time was located in a yeshiva in a neighboring district (Tr. pp. 208-09, 405, 414-15, 450-51, 557-58).[2]

In or about May 2010, the father informed the district that the NPS would be relocating to the district and discussed the need to schedule CSE meetings for students at the NPS to obtain special education services (Tr. pp. 498-499, 507-12, 534; see Parent Ex. G). The parents met with the district's supervisor of case management and nonpublic school services, who was also the liaison to nonpublic schools (the supervisor) in June 2010 to discuss the NPS relocating into the district and how best the district could provide services to students in the NPS, which at the time did not have a basic educational data system (BEDS) number (Tr. pp. 520-21).[3] By the end of July 2010, the parents had requested that the district provide transportation for their son between his home and the NPS (Parent Ex. D).

In August 2010, the parents met with the district's superintendent and the district's director of the office of funded programs to discuss the NPS moving into the district and the provision of services to students in the NPS (Tr. pp. 521-23, 540-42, 549-50). The student's father sent an e-mail to the district's superintendent in August 2010 requesting that the CSE convene with regard to two students at the NPS, including his son, and noting that the NPS was located in the district (Parent Ex. G).[4] In response, the supervisor stated that annual reviews had not been conducted for the students because the NPS was located in a neighboring district during the 2009-10 school year, but that "[o]nce the school year begins, and [the NPS] returns" to the district, she would conduct annual reviews for the students (id.). On August 22, 2010, the parents signed an enrollment contract making them liable for the student's tuition at the NPS for the 2010-11 school year (Parent Ex. L at p. 2).

In August and September 2010, the district conducted evaluations of the student including an educational evaluation, a speech-language evaluation, and an OT evaluation (Dist. Exs. 5-6; see

[2] The student's mother testified that she is a director of the NPS and that the father, although "not a director," is "on the board" (Tr. pp. 450-51). The student's father testified that he is the "president of the board" for the NPS (Tr. p. 535).

[3] BEDS is the system used to collect district and school student enrollment and staff counts for federal and State reporting requirements (see http://www.p12.nysed.gov/irs/data_collection.html; Tr. pp. 209-10, 248-49, 256-57).

[4] The student's father did not specify in the e-mail that one of the two students was his son (see Parent Ex. G).

Parent Ex. I at p. 6).[5] The CSE convened on October 19, 2010 to develop the student's IEP for the 2010-11 school year (Parent Ex. I). In the resultant IEP, the CSE offered a similar 8:1+2 special class placement and related services as described in the August 2009 IEP (compare Dist. Ex. 1 at pp. 1-2, with Parent Ex. I at pp. 1-2). The parents indicated at the October 2010 CSE meeting that they disagreed with the recommended program, informed the district that the student would remain at the NPS, and indicated their desire to challenge the IEP through the impartial hearing process (Tr. pp. 213, 276, 296-97; Parent Ex. I at p. 6; see Dist. Ex. 7 at p. 6). As a result, the district developed an individualized education services program (IESP) for the student,[6] which included the same services as the IEP but indicated that the student had been parentally placed at the NPS and dually enrolled in the district (Dist. Ex. 7 at pp. 1-2, 6; compare Dist. Ex. 7, with Parent Ex. I). At the close of the October 2010 CSE meeting, the student's father indicated in writing to the district that he was privately placing the student at the NPS (Dist. Ex. 19). The father reported that he wrote the letter because the CSE chairperson stated that he had to write a statement to that effect in order for the district to provide services to the student (Tr. p. 950).

Due Process Complaint Notice

By due process complaint notice dated February 9, 2011, the parents requested an impartial hearing and asserted that the October 2010 IEP failed to offer the student a free appropriate public education (FAPE) (Parent Ex. J at p. 1). Specifically, the parents asserted that the October IEP was procedurally defective because it was not timely (id.). The parents also asserted that due to the district's delay in developing the student's IEP and providing certain related services to the student, they were required to pay for the student to receive the necessary services at the NPS that would otherwise have been provided by the district, including a 1:1 aide, speech-language therapy, and transportation to the NPS (id. at p. 2). The parents further contended that the IEP was substantively deficient because the CSE recommended that the student be placed in a classroom with autistic children who were not of similar intellectual, social/emotional, or physical development (id.). Finally, the parents challenged the IEP alleging that it failed to specify social/emotional goals, despite the student's acknowledged needs in that area (id.). The parents sought reimbursement for the student's tuition at the NPS; for their provision of a 1:1 aide, speech-language therapy, and transportation in accordance with the IEP for the period of time at the beginning of the 2010-11 school year that such services were not implemented by the district; and for an "emotional goal IEP" developed by a clinical psychologist (id. at pp. 2-3).

Impartial Hearing and Decision

An impartial hearing was convened on April 4, 2011 and concluded on May 18, 2011, after five days of proceedings (Tr. pp. 1-973).[7] In a decision dated July 22, 2011, the impartial hearing

[5] The OT evaluation was not entered into the hearing record.

[6] Under certain circumstances, a student may be dually enrolled in both a public and nonpublic school and receive special educational services pursuant to an IESP (Educ. Law § 3602-c[2][b][1]).

[7] Although the impartial hearing officer indicated on the first day of hearing that the parties had held a prehearing conference (Tr. pp. 7-8), no record of the conference appears in the hearing record. I remind the impartial hearing officer of his obligation to enter a transcript or summary of the prehearing conference into the hearing record (8 NYCRR 200.5[j][3][xi]).

officer found that the district failed to offer the student a FAPE on both procedural and substantive grounds for the 2010-11 school year (IHO Decision at pp. 8-21).[8] The impartial hearing officer further found that the NPS was an appropriate unilateral placement for the student (id. at pp. 22-25). However, the impartial hearing officer declined to award reimbursement of the tuition costs at the NPS finding that equitable considerations did not support the parents' request (id. at pp. 26-29). Specifically, the impartial hearing officer found that the parents' testimony that they would have considered an appropriate public school placement was "not supported by their actions and evidence" and that "regardless of the CSE's recommended placement," the student would have returned to the NPS (id. at pp. 26, 28-29). The impartial hearing officer supported this credibility determination by noting that: (1) the student had attended only nonpublic, religious schools since kindergarten; (2) the student transferred to the NPS when the parents founded it in September 2009; (3) the parents committed to sending the student to the NPS for the 2010-11 school year prior to the October 2010 CSE meeting; (4) the parents did not assert that they were required to enroll the student in the NPS to preserve a seat for him at that school; and (5) at no point during their communications with the district during spring and summer 2010 did the parents indicate that they were referring the student to the district for purposes of securing a placement for him in a district school (id. at pp. 7, 26-28).

The impartial hearing officer ordered that the October 2010 IEP be annulled, that the October 2010 IESP remain in effect "only to the extent that it provides the related services listed," and that the district reimburse the parents for their costs in providing the student with related services from the beginning of the 2010-11 school year until the time the district provided the services, including for the 1:1 aide and speech-language therapy (IHO Decision at p. 29).

Appeal for State-Level Review

The parents appeal, seeking reversal of the impartial hearing officer's decision to the extent that it did not grant them reimbursement for the student's tuition at the NPS. The parents argue that there is no evidence in the hearing record to support the impartial hearing officer's denial of their request for tuition reimbursement based on equitable grounds when both the parents testified that they would have sent the student to a district placement if it offered him a FAPE. The parents further argue that because the impartial hearing officer found that they gave the district proper notice of their unilateral placement of the student at the NPS and cooperated with the evaluation and IEP development processes, the other equitable considerations cited by the impartial hearing

[8] I note that, despite the impartial hearing officer's assertions to the contrary (IHO Decision at p. 2), the extensions he granted are not noted in the hearing record, with the exception of a reference during the April 14, 2011 hearing date that he "believed" extensions had been granted (Tr. p. 565) and a statement on the final day of hearing regarding when the parties' closing briefs would be due (Tr. pp. 968-69). The decision indicates that, in fact, the closing briefs were submitted some time later (IHO Decision at p. 2), with no indication in the hearing record that a further extension was granted. I remind the impartial hearing officer to comply with the regulatory requirements governing the granting of extensions, including documenting in writing the reason for which each extension is granted, that the impartial hearing officer "fully consider[ed]" the relevant factors, and that an extension was not granted solely due to "scheduling conflicts" absent "a compelling reason or a specific showing of substantial hardship" (8 NYCRR 200.5[j][5][i-iv]). Moreover, the impartial hearing officer has not demonstrated compliance with the 45-day timeline for issuing the decision absent specific extensions of time insofar as the impartial hearing officer was required to draft a written response for each extension request and enter the response into the hearing record (8 NYCRR 200.5[j][5][iv]).

officer do not weigh against granting them tuition reimbursement. Specifically, the parents assert that: (1) there is no legal significance to the fact that the student has attended only nonpublic, religious schools since kindergarten; (2) the parents were required to enroll the student at the NPS prior to the CSE meeting because of the district's failure to convene the CSE meeting prior to the beginning of the school year; (3) while the parents did not send a written request to the district regarding their desire to have an appropriate program made available to the student, they were in contact with the district regarding the student's need for an IEP; and (4) even if the parents intended to send the student to the NPS regardless of the placement offered by the district, that intent is not dispositive if, as here, the parents cooperated with the district and other equitable considerations support reimbursement. Finally, the parents argue that with regard to equitable considerations in this case, the impartial hearing officer erred in failing to weigh the district's actions in violating the student's procedural and substantive rights against their actions.[9]

Discussion

Scope of Review

Initially, I note that the impartial hearing officer's determinations that the program the district offered the student in the October 2010 IEP was not appropriate, that the IESP remain in effect to the extent that it required the district to provide related services to the student at the NPS, and that the district reimburse the parents for the cost of the related services they provided to the student at the NPS have become final and binding upon the parties (34 C.F.R. § 300.514[a]; 8 NYCRR 200.5[j][5][v]).

Additionally, the parents do not appeal from the impartial hearing officer's failure to address their reimbursement requests for transportation costs or an "emotional goal IEP" (Parent Ex. J at pp. 2-3). Accordingly, the sole issue remaining for my determination is whether equitable considerations favor the parents regarding reimbursement for the student's tuition at the NPS for the 2010-11 school year.

Equitable Considerations—Standards

A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, if the services offered by

[9] In accordance with applicable regulations, the answer in this matter was due to be served on the district by September 6, 2011 (8 NYCRR 279.5). On September 7, counsel for the district contacted the Office of State Review requesting an extension of time in which to answer the petition. The request for an extension did not comply with the Office of State Review's regulations regarding such requests, as it was not made on or before the date on which the time to answer expired, and it gave no reasons for the request (8 NYCRR 279.10[e]); and following the parents' objection, the request was denied. The district thereafter sent an answer by facsimile to this office, including correspondence asserting reasons why an extension was requested, and thereafter served the answer on the parents. I note that the answer was served outside of the allowable time lines, was improperly filed by facsimile, was not verified, and exceeded the permissible page limitations, all in contravention of the practice regulations (8 NYCRR 279.4[b], 279.5, 279.7, 279.8[a][5]). Accordingly, the district's answer will not be considered. However, I note that notwithstanding the district's failure to properly answer, I am still required to examine the entire hearing record and make an independent decision based solely on my review of that record (20 U.S.C. § 1415[g][2]; 34 C.F.R. §§ 300.514[b][2][i], [v]; 8 NYCRR 279.12[a]; Application of the Bd. of Educ., Appeal No. 09-057).

the board of education were inadequate or inappropriate, the services selected by the parents were appropriate, and equitable considerations support the parents' claim (Florence County Sch. Dist. Four v. Carter, 510 U.S. 7 [1993]; Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369-70 [1985]). In Burlington, the Court found that Congress intended retroactive reimbursement to parents by school officials as an available remedy in a proper case under the IDEA (471 U.S. at 370-71; Gagliardo v. Arlington Cent. Sch. Dist., 489 F.3d 105, 111 [2d Cir. 2007]; Cerra v. Pawling Cent. Sch. Dist., 427 F.3d 186, 192 [2d Cir. 2005]). "Reimbursement merely requires [a district] to belatedly pay expenses that it should have paid all along and would have borne in the first instance" had it offered the student a FAPE (Burlington, 471 U.S. at 370-71; see 20 U.S.C. § 1412[a][10][C][ii]; 34 C.F.R. § 300.148).

Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; M.C. v. Voluntown, 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; see S.W. v. New York City Dep't of Educ., 646 F. Supp. 2d 346, 361-64 [S.D.N.Y. 2009]; Thies v. New York City Bd. of Educ., 2008 WL 344728 [S.D.N.Y. Feb. 4, 2008]; M.V. v. Shenendehowa Cent. Sch. Dist., 2008 WL 53181, at *5 [N.D.N.Y. Jan. 2, 2008]; Bettinger v. New York City Bd. of Educ., 2007 WL 4208560, at *4 [S.D.N.Y. Nov. 20, 2007]; Carmel Cent. Sch. Dist. v. V.P., 373 F. Supp. 2d 402, 417-18 [S.D.N.Y. 2005], aff'd, 2006 WL 2335140 [2d Cir. Aug. 9, 2006]; Werner v. Clarkstown Cent. Sch. Dist., 363 F. Supp. 2d 656, 660-61 [S.D.N.Y. 2005]; see also Voluntown, 226 F.3d at 69 n.9; Wolfe v. Taconic Hills Cent. Sch. Dist., 167 F. Supp. 2d 530, 533 [N.D.N.Y. 2001]; Application of the Dep't of Educ., Appeal No. 07-079; Application of the Dep't of Educ., Appeal No. 07-032).

The IDEA allows that reimbursement may be reduced or denied if parents do not provide notice of the unilateral placement either at the most recent CSE meeting prior to removing the student from public school, or by written notice ten business days before such removal, "that they were rejecting the placement proposed by the public agency to provide a [FAPE] to their child, including stating their concerns and their intent to enroll their child in a private school at public expense" (20 U.S.C. § 1412[a][10][C][iii][I]; see 34 C.F.R. § 300.148[d][1]). This statutory provision "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a [FAPE] can be provided in the public schools" (Greenland Sch. Dist. v. Amy N., 358 F.3d 150, 160 [1st Cir. 2004]). Although a reduction in reimbursement is discretionary, courts have upheld the denial of reimbursement in cases where it was shown that parents failed to comply with this statutory provision (Greenland, 358 F.3d at 160; Ms. M. v. Portland Sch. Comm., 360 F.3d 267 [1st Cir. 2004]; Berger v. Medina City Sch. Dist., 348 F.3d 513, 523-24 [6th Cir. 2003]; Rafferty v. Cranston Public Sch. Comm., 315 F.3d 21, 27 [1st Cir. 2002]; see Frank G. v. Bd. of Educ., 459 F.3d 356, 376 [2d Cir. 2006]; Voluntown, 226 F.3d at 68).

Essentially, the parents disagree with the impartial hearing officer's credibility determinations regarding the parents' testimony that, had the district offered the student a FAPE, they would have enrolled the student in a district program. A State Review Officer gives due deference to the credibility findings of the impartial hearing officer, unless the hearing record, read in its entirety, would compel a contrary conclusion (see Carlisle Area School v. Scott P., 62 F.3d 520, 524, 528-29 [3d Cir. 1995]; M.V. v. Shenendehowa Cent. Sch. Dist., 2008 WL 53181, at *4 [N.D.N.Y. Jan. 2, 2008]; Bd. of Educ. v. Schaefer, 84 A.D.3d 795, 796 [2d Dep't 2011]; Application of a Student with a Disability, Appeal No. 11-074; Application of a Student with a Disability, Appeal No. 11-064; Application of a Student with a Disability, Appeal No. 10-018; Application of the Bd. of Educ., Appeal No. 09-087; Application of a Student with a Disability, Appeal No. 08-157; Application of the Dep't of Educ., Appeal No. 08-105; Application of a Student Suspected of Having a Disability, Appeal No. 08-100; Application of the Bd. of Educ., Appeal No. 08-085; Application of the Bd. of Educ., Appeal No. 08-074; Application of the Dep't of Educ., Appeal No. 08-037). As discussed below, a review of the complete hearing record does not compel a contrary conclusion and in this circumstance, there is no reason to disturb the impartial hearing officer's credibility determinations.

During the 2009-10 school year, the NPS was located in a neighboring district (Tr. pp. 208-09, 405, 450, 557-58). Beginning in March 2010, the parents began investigating the possibility of relocating the NPS to the district, learning sometime in May or June 2010 that they would have a classroom for the NPS in a yeshiva located within the district (Tr. pp. 472, 497-99). The hearing record clearly establishes that the parents were in contact with the district regarding the NPS's relocation (Tr. pp. 407, 474-76, 507-12, 534; Parent Exs. B-C; G), however, it does not establish that at any point during the spring or summer 2010, they requested that the CSE convene for purposes of enrolling the student in the public school or developing an IEP offering the student a placement in a district school. To the contrary, a letter to the district from counsel for the NPS dated May 5, 2010 indicated that the NPS sought to meet with the district superintendent regarding "how [the NPS] can best work with the district to obtain the necessary services and/or funding to enhance the education of its student population" (Parent Ex. B). Similarly, the supervisor testified that her conversations with the parents during spring and summer 2010 provided only "tentative" indications that the NPS would be relocating to the district (Tr. pp. 240-41, 248-49) and that she never received an official notice that the NPS had returned to the district (Tr. pp. 212-13, 254).

Furthermore, the supervisor testified that the parents never indicated that they desired the district to provide a public school placement for their son; rather, they seemed "very proud of the program that they had developed [at the NPS] and [she] was under the impression that since [the student's] parents were the directors and the developers that he would remain with that program" (Tr. p. 289). It was her impression "that the most important part of the whole IEP that we were going to be developing for him was to make sure that he could get the speech and the OT, the related services that he would need within the context of" the NPS (Tr. pp. 289-90).

While both the parents testified that they would have accepted an appropriate public school placement (Tr. pp. 414, 527, 545-46), I find that a review of the entirety of the hearing record does not compel me to conclude that the impartial hearing officer erred in finding this testimony not credible. I note that in addition to the supervisor's testimony regarding her belief that the parents were not seeking a public school placement, the consultant staff psychologist for the NPS from its inception in 2009 until November 2010 testified that she assumed that the student would return to

the NPS for the 2010-11 school year (Tr. pp. 688-89). Moreover, the parents requested transportation services from the district to the yeshiva in which the NPS was housed prior to requesting that the CSE convene to develop an IEP for the student (Parent Exs. D; G).

Although the impartial hearing officer noted that the parents eventually "object[ed] in writing to the recommended placement in a [d]istrict program" and advised the district of their intention to enroll the student at the NPS for the 2010-11 school year (IHO Decision at p. 26; Dist. Ex. 19), I find that, in addition to the reasons cited by the impartial hearing officer for denying reimbursement to the parents, they did not comply with the statutory requirements to provide notice to the district and this failure to provide the required notice prior to enrolling the student in the private school also weighs against granting them reimbursement (20 U.S.C. § 1412[a][10][C][iii]; 34 C.F.R. § 300.148[d]). The note written by the student's father at the October 2010 CSE meeting and cited by the impartial hearing officer does not "stat[e the parents'] concerns and their intent to enroll their child in a private school at public expense" (id.; see Dist. Ex. 19). The letter of parental placement merely states the parents' intent to enroll their child in a private school when he had already been enrolled in the NPS (Dist. Ex. 19). The supervisor testified that the parents stated at the CSE meeting that they were not satisfied with the recommended placement, but did not specify in what way it was deficient (Tr. pp. 213, 296-97). Had the parents notified the district as to their concerns, the supervisor testified that the district "could have discussed . . . and we could have gone further with it" (Tr. pp. 296-97). Similarly, there is no indication in the hearing record that the parents informed the district that they were seeking tuition reimbursement for their placement of the student at the NPS until the due process complaint notice, some four months after the CSE meeting (Parent Ex. J).

Accordingly, the parents did not provide the district with the required notice before unilaterally placing him at the NPS for the 2010-11 school year (see Carmel, 373 F. Supp. 2d at 414-15 [holding that parents must "put FAPE at issue" in each school year for which they seek tuition reimbursement by giving notice to the district]; see also Wood v. Kingston City Sch. Dist., 2010 WL 3907829, at *7 [N.D.N.Y. Sept. 29, 2010] [noting that each year that FAPE is at issue, the parents must notify the district of their dissatisfaction prior to enrolling the student in a private school and seeking reimbursement]; S.W., 646 F. Supp. 2d at 362-63; Application of the Dep't of Educ., Appeal No. 11-015; Application of the Dep't of Educ., Appeal No. 10-099). Rather, the hearing record reflects that the district reasonably believed that the parents were seeking to dually enroll the student at the NPS so as to receive related services pursuant to an IESP and the parents did not state otherwise (Tr. pp. 289-92, 296-99, 582-83, 688-89, 915; Dist. Ex. 7 at pp. 1-2, 6; Parent Ex. D).[10] For the foregoing reasons, I agree with the impartial hearing officer that equitable considerations preclude tuition reimbursement in this case.

[10] I note that the hearing record does not contain a timely parental request for dual enrollment services pursuant to Education Law § 3602-c. The parties have asserted no position with regard to the applicability of Education Law § 3602-c and its attendant time lines when the parents were residents of the district at all relevant times, but the private school itself relocated into the district after the June 1 deadline. Accordingly, I express no opinion on the matter in this decision.

Conclusion

A full review of the hearing record does not compel a contrary conclusion with regard to the impartial hearing officer's credibility determinations; accordingly, I find that the impartial hearing officer acted within his discretion in declining to award the parents reimbursement for the student's tuition at the NPS for the 2010-11 school year.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
September 29, 2011

JUSTYN P. BATES
STATE REVIEW OFFICER