The University of the State of New York

The State Education Department
State Review Officer
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No. 12-011

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 Center Moriches Union Free School District

Appearances:
Thivierge & Rothberg, PC, attorneys for petitioners, Christine D. Thivierge, Esq., of counsel

Frazer & Feldman, LLP, attorneys for respondent, Jacob S. Feldman, Esq., of counsel

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioners (the parents) appeal from the decision of an impartial hearing officer (IHO) which denied their requests to direct respondent (the district) to pay for the costs of their son's tuition at the Empowering Long Island's Journey Through Autism (ELIJA) School for the 2009-10 school year. The appeal must be dismissed.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, at least one psychologist, and school district representatives (Educ. Law. § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; 34 CFR 300.151-300.152, 300.506, 300.511; Educ. Law § 4404[1]; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law. § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2],[c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.514[c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

Upon review and consideration of the hearing record and as discussed more fully below, this decision will not include a recitation of the student's educational history or address the merits of the parents' appeal because the issues in controversy are no longer live and no meaningful relief can be granted, thereby rendering the instant appeal moot.

The student's eligibility for special education programs and related services as a student with autism is not in dispute in this proceeding (see 34 CFR 300.8[c][1]; 8 NYCRR 200.1[zz][1]). Briefly, the CSE convened on April 30, May 14, June 19, and July 21, 2009 to conduct the student's annual review and to develop his IEP for the 2009-10 school year (IHO Ex. 2 at pp. 2-4). As a

result, the CSE recommended placing the student in a 1:1:1 special class in the district with related services of speech-language therapy and speech-language therapy direct consult services; occupational therapy (OT) and OT direct consult services; physical therapy; and parent counseling and training (see Dist. Exs. 17 at p. 29; 18 at pp. 1-2; see also Dist. Exs. 2-3; 5-14). In addition, the CSE recommended the services of an autism consultant, testing accommodations, extended school year services, the use of an augmentative communication device (assistive technology), special transportation, and supports for school personnel such as an autism consultant, a behavior management consultant, and a speech-language therapy consultation (see Dist. Exs. 17 at pp. 29-30; 18 at pp. 1-2). The district also developed a transition plan (see Dist. Exs. 16; 20).

By letter dated July 28, 2009, the parents rejected the public school program for the 2009-10 school year, and notified the district of their intention to unilaterally place the student at ELIJA for the 2009-10 school year and to seek reimbursement for the costs of the student's tuition and transportation related to the placement (Parent Ex. U at p. 1).[1] At the time of the impartial hearing, the student was attending the ELIJA School, where he has continuously attended school since 2007 (see IHO Ex. 2 at p. 2). The Commissioner of Education has not approved the ELIJA School as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7]).

A. Due Process Complaint Notice

By due process complaint notice dated August 19, 2009, the parents alleged that the district failed to offer the student a free appropriate public education (FAPE) for the 2009-10 school year based upon procedural and substantive violations (see IHO Ex. 2 at pp. 1, 4-6). The parents indicated that throughout the proceedings, the student must remain in his pendency placement, which was described as the following: placement at the ELIJA School (including 30 hours per week of 1:1 applied behavior analysis (ABA) instruction in the classroom), ABA supervision, parent training, transportation, 1:1 speech-language therapy, 1:1 physical therapy (PT), and a 12-month program (id. at p. 1). The parents asserted that the district's program was overly restrictive, the district failed to consider the full continuum of services available for the student, the district's staff were not trained to use the student's augmentative communication device, the district's program was "unfinished and untested," the district failed to apply to other placements that offered 1:1 ABA, the district's program did not include other students, the district's program did not include a qualified behavior consultant, and the 2009-10 IEP contained too many related services goals and objectives (id. at pp. 4-6). As relief, the parents requested the student's continued placement at the ELIJA School (including 30 hours per week of 1:1 ABA instruction), ABA supervision and consultation, parent training and counseling, and transportation, and further, that the district pay the costs of the student's tuition at the ELIJA School for the 2009-10 school year (id. at p. 6).

[1] In a letter dated August 10, 2009, the parents admitted receiving the student's 2009-10 IEP on July 29, 2009 (see Parent Ex. C at p. 1).

B. IHO Decision

The parties proceeded to an impartial hearing on November 30, 2009, and after 28 nonconsecutive days, concluded on May 24, 2011 (see IHO Decision at pp. 1-4).[2] In a 158-page decision, dated December 5, 2011, the IHO concluded that the district offered the student a FAPE in the least restrictive environment (LRE) (id. at pp. 145-57). The IHO found that the district considered a number of evaluations and observations of the student, as well as progress reports from the ELIJA School, in developing the student's 2009-10 IEP (id. at pp. 145-46). She also found that the district—relying upon this information—accurately identified the student's needs in the IEP, drafted the student's present levels of performance in the IEP, and drafted annual goals and short-term objectives to address the student's needs, and that the CSE did so with the input of the parents, district staff, and the ELIJA School representatives (id. at pp. 146-47). In addition, the IHO determined that the CSE recommended appropriate special education services to meet the student's needs, and that by definition, the district's recommended 1:1:1 special class was less restrictive than the student's unilateral placement at the ELIJA School, which was far from the student's local community and deprived him of access to his typically developing peers in a public school setting (id. at p. 148). Next, the IHO approved of the district's plan to introduce typically developing peers into the student's classroom for social interactions and improving the student's social skills (id. at pp. 148-50). The IHO also determined that the autism consultation services, the speech-language therapy consultation services, the recommendation for staff training in crisis intervention procedures (behavior management consultation), and the recommendation for special transportation were appropriate to meet the student's special education needs (id. at pp. 150-51). In addition, she found that the district's transition plan, as drafted, was appropriate and that the district's recommended program satisfied the criteria of the parents' own educational consultants (id. at pp. 151-55). Finally, the IHO concluded that the related services recommendations were also appropriate to meet the student's special education needs, and that the push-in direct consult services in OT and speech-language therapy were consistent with the recommendations made by the parents' own educational consultants (id. at p. 155). Based upon her determination that the district's program offered the student a FAPE in the LRE, the IHO did not analyze the appropriateness of the parents' unilateral placement at the ELIJA School for the 2009-10 school year, and she dismissed the parents' due process complaint notice in its entirety (id. at pp. 156-57).

IV. Appeal for State-Level Review

The parents appeal, and assert that the IHO erred in concluding that the district offered the student a FAPE in the LRE for the 2009-10 school year. Specifically, the parents argue that the IHO's entire decision does not comport with the evidence in the hearing record, the district's recommended program for the 2009-10 school year must be evaluated based upon the content of the IEP and not upon testimony describing what the district could have offered, the IHO improperly

[2] After the expiration of the 2009-10 school year at issue in this appeal on June 30, 2010, the impartial hearing continued for an additional 15 days with the last day of testimony occurring within approximately one month of the expiration of the 2010-11 school year (see IHO Decision at pp. 2-3). In addition, the parties submitted post-hearing briefs to the IHO on September 6, 2011, and the hearing record contains a total of 25 documented extensions to the compliance date in this matter, 6 of which occurred after the last day of testimony (see id. at pp. 3-4).

determined that the district's recommended program would operate similarly to the ELIJA School's program with respect to the proposed rotation of instructors, the student would not have been appropriately placed in an 8:1+1 special class or alongside nondisabled peers, the IHO improperly concluded that the district's program was the student's LRE, and the IHO improperly placed the burden on the parents to establish whether they meaningfully participated in the development of the student's IEP. In addition, the parents also argue that the district failed to consider the full continuum of services for the student, the district committed numerous procedural violations—including the failure to present any annual goals until June 2009, without the parents' participation; the 2009-10 IEP failed to reference "all" of the student's evaluation results; the comments in the 2009-10 IEP were inaccurate; the parents were denied a meaningful opportunity to participate in the development of the student's IEP; the district failed to develop a behavioral intervention plan (BIP) for the student; the district's staff lacked training and experience to adjust the student's BIP; and the district's transition plan was not appropriate for the student. The parents contend that the ELIJA School was appropriate to meet the student's special education needs, and equitable considerations do not preclude an award of the student's tuition costs in this case.

In its answer, the district responds to the parents' allegations with admissions and denials. The district asserts that the IHO properly concluded that the district offered the student a FAPE in the LRE for the 2009-10 school year. The district further contends that the ELIJA School was not an appropriate placement, that the testimony provided by the parents' witnesses was not credible, and that the parents offer little evidence to justify reversing the IHO's decision. The district seeks to dismiss the parents' petition.

V. Applicable Standards and Discussion

A. Mootness

Initially, I must note that in this case the parents have already received all of the relief they were seeking at the impartial hearing by virtue of pendency and the 2009-10 school year at issue has expired, which raises the question of whether the instant appeal has been rendered moot by the passage of time. Next, I note that both parties have confirmed that the student's pendency (stay put) placement for the 2009-10 school year was the ELIJA School—as described in the parents' due process complaint notice—and that the district has fully paid for the student's pendency placement throughout the administrative due process proceedings, including through the instant appeal (Dist. Aff. at pp. 1-3; Parent Aff. at pp. 1-2). Therefore, upon careful consideration of the evidence in the hearing record, I find that regardless of the merits of a decision concerning whether the district offered the student a FAPE for the 2009-10 school year, no further meaningful relief may be granted to the parents because they have received all of the relief sought pursuant to pendency, and thus, the parents' appeal has been rendered moot. In addition, careful consideration of the District Court's recent decision rendered in New York City Dept. of Educ. v. V.S., 2011 WL 3273922 (E.D.N.Y. July 29, 2011), as discussed further below, does not compel a different result.

As other SROs have long held in administrative reviews of IHO decisions, the dispute between the parties in an appeal must at all stages be "real and live," and not "academic," or it risks becoming moot (see Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84 [2d Cir. 2005]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]; J.N. v. Depew Union Free

Sch. Dist., 2008 WL 4501940, at *3-*4 [W.D.N.Y. Sept. 30, 2008]; see also Chenier v. Richard W., 82 N.Y.2d 830, 832 [1993]; Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 [1980]; Application of a Child with a Disability, Appeal No. 07-139). In general, cases dealing with issues such as desired changes in IEPs, specific placements, and implementation disputes may become moot at the end of the school year because no meaningful relief can be granted (see, e.g., Application of the Bd. of Educ., Appeal No. 06-044; Application of the Bd. of Educ., Appeal No. 05-058; Application of a Child with a Disability, Appeal No. 04-027; Application of a Child with a Disability, Appeal No. 00-037; Application of the Bd. of Educ., Appeal No. 00-016; Application of a Child with a Disability, Appeal No. 96-37). Administrative decisions rendered in cases that concern such issues that arise out of school years since expired may no longer appropriately address the current needs of the student (see Daniel R.R. v. El Paso Indep. Sch. Dist., 874 F.2d 1036, 1040 [5th Cir. 1989]; Application of a Child with a Disability, Appeal No. 07-139; Application of the Bd. of Educ., Appeal No. 07-028; Application of a Child with a Disability, Appeal No. 06-070; Application of a Child with a Disability, Appeal No. 04-007).

However, an exception provides that a claim may not be moot despite the end of a school year for which the student's IEP was written, if the conduct complained of is "capable of repetition, yet evading review" (see Honig v. Doe, 484 U.S. 305, 318-23 [1988]; Lillbask, 397 F.3d at 84-85; Daniel R.R., 874 F.2d at 1040; Application of a Child with a Disability, Appeal No. 04-038). The exception applies only in limited situations (City of Los Angeles v. Lyons, 461 U.S. 95, 109 [1983]), and is severely circumscribed (Knaust v. City of Kingston, 157 F.3d 86, 88 [2d Cir. 1998]). First, it must be apparent that "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration" (Murphy v. Hunt, 455 U.S. 478, 482 [1982]; see Knaust, 157 F.3d at 88; Application of a Child with a Disability, Appeal No. 07-139). Second, controversies are "capable of repetition" when there is a reasonable expectation that the same complaining party would be subjected to the same action again (Weinstein v. Bradford, 423 U.S. 147, 149 [1975]; see Hearst Corp., 50 N.Y.2d at 714-15; Application of a Child with a Disability, Appeal No. 07-139). To create a reasonable expectation of recurrence, repetition must be more than theoretically possible (Murphy, 455 U.S. at 482; Russman v. Bd. of Educ., 260 F.3d 114, 120 [2d Cir. 2001]; Application of a Child with a Disability, Appeal No. 07-139). Mere speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or demonstrated probability of recurrence (Russman, 260 F.3d at 120; Application of a Child with a Disability, Appeal No. 07-139). Mootness may be raised at any stage of litigation (In re Kurtzman, 194 F.3d 54, 58 [2d Cir. 1999]; Application of a Child with a Disability, Appeal No. 07-139).

In this case, there is no longer any live controversy relating to the parties' dispute over the placement or program offered by the district for the 2009-10 school year. Here, even if a determination on the merits demonstrated that the district did not offer the student a FAPE for the 2009-10 school year, in this instance, it would have no actual effect on the parties because the 2009-10 school year expired on June 30, 2010, and the student remained entitled to his pendency placement at the ELIJA School funded by the district through the conclusion of the administrative due process. Accordingly, the parents' claims for the 2009-10 school year need not be further addressed here. An SRO is not required to make a determination that is academic or will have no actual impact upon the parties (Application of a Student with a Disability, Appeal No. 09-077; Application of a Student with a Disability, Appeal No. 09-065; Application of a Student with a

Disability, Appeal No. 08-104; Application of the Dep't of Educ., Appeal No. 08-044; Application of a Child with a Disability, Appeal No. 07-077; Application of the Bd. of Educ., Appeal No. 06-044; Application of the Bd. of Educ., Appeal No. 04-006; Application of a Child with a Disability, Appeal No. 02-086; Application of a Child with a Disability, Appeal No. 02-011; Application of a Child with a Disability, Appeal No. 97-64).

With regard to the District Court's decision in V.S., the Court held that in Application of the Dep't of Educ., Appeal No. 10-041, the SRO correctly determined that the parents' request for funding for the school year that was the subject of that appeal was no longer at issue where the student was educated at public expense at a private school chosen by the parents for the duration of the school year pursuant to a pendency order (V.S., 2011 WL 3273922, at *9). Noting that a decision in favor of the district in that matter would not affect its obligation to pay the costs of the student's private school tuition, the Court nevertheless determined that the district sought redress regarding the collateral issue of the student's ongoing pendency placement for future proceedings and that had a decision been rendered by an SRO on the merits, it would have affected the student's placement (id.). After careful consideration and for several reasons described below, I respectfully decline to adopt the reasoning as set forth in V.S.[3]

First, the sole reason that the District Court held that Application of the Dep't of Educ., Appeal No. 10-041, was not moot was because the parties required resolution of the merits of their dispute to establish the student's pendency placement in future proceedings (V.S., 2011 WL 3273922, at *10);[4] however, this rationale regarding future pendency may be read so broadly as to apply to virtually any and all IDEA proceedings involving the educational placement or services to be provided to a student, and other courts in New York have not adopted this broad approach (see Bd. of Educ. v. O'Shea, 353 F. Supp. 2d 449, 457 [S.D.N.Y. 2005] [determining the matter was moot and declining to resolve the merits of the parties' dispute when the pendency provision provided an independent basis for doing so]; see also Murphy v. Arlington Cent. School Dist. Bd. of Educ., 297 F.3d 195 [2d Cir. 2002] [ruling that the pendency provision formed a basis for awarding relief without addressing the merits of the parties' dispute]; Bd. of Educ. v. Schutz, 290 F.3d 476, 484 [2d Cir. 2002] [rejecting the district's argument that a dispute must be resolved on the merits rather than on the basis of the pendency provision]; Patskin, 583 F. Supp. 2d at 428-29 [holding that the matter was moot where the school year at issue had passed, and stating that the relevant controversy was whether the IEP that the student was provided with was an appropriate placement and that there was no reasonable expectation that the student would be subjected to that particular IEP again]; M.S. v. New York City Dep't of Educ., 734 F. Supp. 2d 271, 273, 278-80

[3] Although SROs endeavor to adhere as closely as possible to the legal guidance provided by the courts, in rare instances, where conflicting authorities regarding statutory interpretation are present, such authority may not be binding upon an SRO (see Application of the Bd. of Educ., Appeal No. 05-074 [holding that a student need not have previously received special education services from a public agency to be eligible for reimbursement when the District Court had previously ruled to the contrary]).

[4] Although infrequent, it is not unheard of for a student to remain in a pendency placement for years, even after administrative and court decisions have been issued multiple times (see, e.g., B.J.S. v. State Educ. Dep't/Univ. of the State of New York, 2011 WL 3651051, *1 [W.D.N.Y. Aug. 18, 2011] [acknowledging that the student remained in a 2003-04 pendency placement despite numerous subsequent adjudications regarding the student's educational placement]).

[E.D.N.Y. Aug. 25, 2010] [dismissing the case as moot and noting that the parents were receiving full compensation for their private school expenditures and that the proceeding was brought to obtain legal fees]; J.N., 2008 WL 4501940, at *3-*4 [upholding an SRO's determination that the case was moot]; Bd. of Educ. v. Steven L., 89 F.3d 464, 468-69 [7th Cir 1996] [holding that it was not necessary to determine which party would prevail on the merits when the stay put provision controlled for the duration of the dispute and the proposed public school IEP was no longer applicable to the student]; see generally New York City Dep't of Educ. v. S.S., 2010 WL 983719 [S.D.N.Y. Mar. 17, 2010]).[5] Additionally, the Ninth Circuit has explicitly rejected this rationale, holding that the stay put provision cannot be relied upon as the basis for a live controversy when the issue of liability on the substantive issues has been rendered moot (Marcus I. v. Dep't of Educ., 2011 WL 1979502, at *1 [9th Cir. May 23, 2011] [explaining that stay put provision 20 U.S.C. § 1415[j] is designed to allow a student to remain in an educational institution pending litigation, but does not guarantee a student the right to remain in any particular institution because the right to a stay put placement that stems from a given adjudicatory proceeding lapses once the proceeding has concluded]).[6]

Second, I am concerned with adjudicating rights unnecessarily, particularly when it will not affect the claims that a party alleged at the outset of the due process proceeding and especially under a statutory scheme like the IDEA, which envisions that parents and districts will continue to convene on at least an annual basis to review a student's current IEP or educational placement, share their concerns with one another, and cooperatively and affirmatively engage in efforts to develop a new appropriate program designed to offer the student a FAPE in the public schools (see 20 U.S.C. § 1414[d][4][A]; 34 CFR 300.324[b][1][i]; see also Educ. Law § 4402[2]; 8 NYCRR 200.4[f]). This process usually works best when it is as free as possible from acrimonious relationships that often develop after continued litigation.[7]

Third, I believe that the automatic nature of the pendency provision set forth in the IDEA (see Zvi D. v. Ambach, 694 F.2d 904, 906 [2d Cir. 1982]; Wagner v. Bd. of Educ., 335 F.3d 297, 301 [4th Cir. 2003]; Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 [3d Cir. 1996]), and if necessary, the speed with which parties may obtain State-level pendency placement reviews on an interlocutory basis under New York's regulatory scheme (see 8 NYCRR 279.10[d]) strongly diminishes the need to establish future pendency placements for future school years; such determinations are better left until the proceedings under which the right arises are commenced and the issue of the student's pendency placement is actually in dispute. Lastly, while I appreciate the Court's comment that a decision on the merits in V.S. would be useful (2011 WL 3273922, at

[5] I also disagree with the interpretation that the District Court in M.N. v. New York City Dep't of Educ. (700 F. Supp. 2d 356 [S.D.N.Y. Mar. 25, 2010]) ruled that the SRO erred in dismissing the case on mootness grounds (V.S., 2011 WL 3273922, at *10). The Court in M.N. only acknowledged the SRO issued the decision on mootness grounds and did not further comment.

[6] I also note what appears to be a discrepancy between the views of the Marcus I Court and the decision in Pawling Cent. Sch. Dist. v. New York State Educ. Dep't. (3 A.D.3d 821 [3d Dep't 2004]) regarding future pendency placements.

[7] Moreover, this is also not a case in which particularly new or novel issues have been presented on the merits. Both SROs and courts have previously provided frequent guidance regarding the types of claims raised in this case.

*10), I am also concerned that the decision has the effect of removing the much needed discretion of administrative hearing officers to focus on both fairly and efficiently resolving disputes while retaining the discretion of how best to allocate their adjudicative resources to address ever growing dockets.[8] For the foregoing reasons, I decline to find that the parents' claim for tuition reimbursement for the 2009-10 school year continues to be a live controversy.

B. Exception to Mootness

Neither party argues that the exception to the mootness doctrine applies in this case, and the hearing record fails to contain evidence or an offer of additional evidence to demonstrate that an exception applies. While it may be theoretically possible that the parties may be involved in a dispute over the same issue for the upcoming school year, such speculation that the parties will be involved in a dispute over the same issue does not rise to the level of a reasonable expectation or a demonstrated probability of recurrence sufficient to satisfy the requirements necessary for the exception to apply. Accordingly, the exception to the mootness doctrine does not apply here as I do not find this matter to be capable of repetition yet evading review (see Honig, 484 U.S. at 318-23; Lillbask, 397 F.3d at 84-85; Daniel R.R., 874 F.2d at 1040; Application of a Child with a Disability, Appeal No. 04-038).

VI. Conclusion

In light of my determinations herein, I find that it is unnecessary to address the parties' remaining contentions.

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
February 28, 2012

STEPHANIE DEYOE
STATE REVIEW OFFICER

[8] For example, the Second Circuit has determined that an exhaustive analysis by the IHO is not mandated in every administrative proceeding and that in appropriate circumstances summary disposition procedures may be employed (J.D. v. Pawlet Sch. Dist., 224 F.3d 60, 69 [2d Cir. 2000]; see Application of the Dep't 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).