



The University of the State of New York

The State Education Department
State Review Officer
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No. 13-174

Application of a STUDENT WITH A DISABILITY, by her 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:

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Lisa R. Khandhar, 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. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) 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.

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, a school psychologist, and a district representative (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]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 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 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

A. Due Process Complaint Notice

A recitation of the student's educational history is not necessary due to the procedural posture of this case. In a due process complaint notice dated June 10, 2013, the parent alleged that the May 2013 CSE's recommendation for the student's placement in a 12:1+1 special class was not appropriate (Dist. Ex. 1). It appears that the district received the due process complaint on or about July 1, 2013 (*id.*). The district responded to the parent's due process complaint notice by filing a Notice of Insufficiency Challenge dated July 5, 2013, challenging the sufficiency and seeking dismissal of the due process complaint notice because it did not include the student's address (Dist. Ex. 2; see 34 CFR 300.508[b][2]; [d]; 8 NYCRR 200.5[i][1][ii]; [i][6]).

B. Impartial Hearing Officer Decision

No hearing was convened in this matter. The IHO issued an Order of Dismissal on August 7, 2013, finding that the parent's due process complaint notice was insufficient because it failed to state the student's address (IHO Decision at p. 1).¹ Accordingly, the IHO dismissed the parent's due process complaint notice while indicating that the parent could submit a new due process complaint notice with the required information included therein (id.).

IV. Appeal for State-Level Review

The parent appeals, objecting to the IHO's dismissal of her due process complaint notice on sufficiency grounds. The parent provides the address of the student and reiterates the claims and seeks the relief set forth in her due process complaint notice.

The district answers the parent's petition, contending that the IHO correctly dismissed the parent's due process complaint notice based on the parent's failure to include the student's address. Additionally, the district asserts that the parent's claim should be dismissed because the parent did not submit a new request for an impartial hearing, as required by federal and State regulations but instead filed a petition for review. Alternatively, the district requests that the case be remanded to the IHO as the district does not dispute that the address provided by the parent in her petition is the student's address.

V. Discussion—Sufficiency of the Due Process Complaint Notice

An impartial hearing may not proceed unless the due process complaint notice satisfies the sufficiency requirements (20 U.S.C. § 1415[b][7][B]; 34 CFR 300.508[c]; 8 NYCRR 200.5[i][2]). A due process complaint notice shall include the name and address of the student; the name of the school the student is attending; "a description of the nature of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem;" and a proposed resolution of the problem (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][7][A][ii]; 34 CFR 300.508[b]). Where there has been the allegation that a due process complaint notice is insufficient, the IDEA and federal and State regulations provide that the party receiving the due process complaint must notify the hearing officer and the other party in writing of their challenge to the sufficiency of the complaint within 15 days of receipt thereof (20 U.S.C. § 1415[c][2][A], [C]; 34 CFR 300.508[d][1]; 8 NYCRR 200.5[i][3]; [i][6][i]). An impartial hearing officer must render a determination within five days of receiving the notice of insufficiency (see 34 CFR 300.508[d][2]).

A review of the parent's due process complaint notice reveals that the IHO correctly found that the complaint was insufficient because the parent did not identify the student's address (Dist. Ex. 1; see IHO Decision at p. 1; see also 34 C.F.R. § 300.508[b][2]; 8 NYCRR 200.5[i][1][ii]).

¹ The Order of Dismissal reflects that the matter was referred to the IHO on July 3, 2013 and that the parent was given until July 10, 2013 to amend her due process complaint notice (IHO Decision at p. 1). The IHO subsequently issued an Amended Order of Dismissal, dated September 12, 2013, which reflects that the matter was referred to the IHO on August 6, 2013 and that the parent was given until July 26, 2013 to amend the due process complaint notice (IHO Amended Decision at p. 1). The hearing record contains no explanation for the differing dates (compare IHO Decision at p. 1, with IHO Amended Decision at p. 1).

However, after review of the hearing record, I find the course of events to be somewhat incongruous. In particular, while it is the parent's responsibility to conform to the minimal pleading requirements of the statute to overcome a sufficiency challenge, the district mailed the notice of insufficiency challenge to the student's residence, reflecting that the district had actual knowledge of the student's address (Answer Ex. 3). The district is reminded that the "the purpose of the sufficiency requirement is to ensure that the other party, which is generally the school district, will have an awareness and understanding of the issues forming the basis of the complaint," and "may not be used as a mechanism to delay a due process hearing" where the district has actual notice of the matter for which it asserts the complaint is insufficient (S. Rep. No. 108-185, at pp. 34-35 [Nov. 3, 2003], available at <http://www.gpo.gov/fdsys/pkg/CRPT-108srpt185/pdf/CRPT-108srpt185.pdf>).

In conclusion, although the parent failed to provide the student's address in her due process complaint notice, that defect, at this juncture, has been remedied in her petition and the district is now amply 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 issues identified in her due process complaint notice.

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 IHO's Order of Dismissal dated August 7, 2013 which dismissed the parent's due process complaint notice is modified to the extent indicated in the body of this decision; and

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

IT IS FURTHER ORDERED that if the IHO who issued the August 7, 2013 decision is unavailable to conduct an impartial hearing, a new IHO shall be appointed to conduct an impartial hearing within 30 days of the date of this decision.

Dated: **Albany, New York**
 October 25, 2013

JUSTYN P. BATES
STATE REVIEW OFFICER