



# The University of the State of New York

## The State Education Department State Review Officer

No. 07-083

### **Application of the NEW YORK CITY DEPARTMENT OF EDUCATION for review of a determination of a hearing officer relating to the provision of educational services to a child with a disability**

#### **Appearances:**

Michael Best, Special Assistant Corporation Counsel, attorney for petitioner, Terri A. Stevens, Esq., of counsel

#### **DECISION**

Petitioner, the New York City Department of Education, appeals from a decision of an impartial hearing officer which directed petitioner to reimburse respondent for transportation costs related to the 2006-07 school year and provide transportation services for respondent's son for the remainder of the 2006-07 school year and the 2007-08 school year. The appeal must be dismissed.

Respondent's son is approximately seven years old, and petitioner does not dispute that he is eligible to receive special education and related services as a student with autism (Pet. ¶¶ 3, 9; see 8 NYCRR 200.1[zz][1]). After conducting an impartial hearing, the impartial hearing officer purportedly issued a decision dated June 8, 2007 (Pet. ¶¶ 3, 8). According to petitioner, the impartial hearing officer directed petitioner to reimburse respondent for costs she incurred as a result of transporting the child to a state-approved nonpublic school located in Paramus, New Jersey, and provide transportation for the child on a specific bus route for the remainder of the 2006-07 school year and the 2007-08 school year (Pet. ¶¶ 3-5).

Petitioner appeals, asserting that the impartial hearing officer erred in granting relief because respondent failed to cooperate and the impartial hearing officer's decision was not based upon an adequate record or appropriate legal analysis. Petitioner contends that the impartial hearing officer lacked jurisdiction to award relief with respect to the 2007-08 school year. Petitioner also alleges that it unsuccessfully attempted personal service of the petition for review upon respondent at two locations between July 11, 2007 and July 23, 2007. Respondent has not answered the petition.

At the outset, a procedural matter must be addressed. On July 19, 2007, the Office of State Review received petitioner's verified petition for review without a hearing record. The Office of State Review inquired about the missing hearing record by telephone, electronic mail and a letter to petitioner dated July 30, 2007, and advised that petitioner needed to file the hearing record. As of this writing, petitioner has failed to submit any documents from the record of the proceeding before the impartial hearing officer, and has not provided a copy of the impartial hearing officer's decision from which it appeals.

A board of education that appeals from the decision rendered in an impartial hearing is required to file the complete record before the impartial hearing officer together with its petition for review (8 NYCRR 279.9[b]). The failure to comply with the practice requirements of Part 279 of the Commissioner's regulations may result in the dismissal of a petition for review by a State Review Officer (see, e.g., Application of the Bd. of Educ., Appeal No. 07-055; Application of the Dep't of Educ., Appeal No. 05-082; Application of the Dep't of Educ., Appeal No. 05-060; Application of the Dep't of Educ., Appeal No. 01-048; see also Application of the Dep't of Educ., Appeal No. 05-073; 8 NYCRR 279.8[a], 279.13). In the absence of the complete record of the proceeding below, a State Review Officer cannot properly proceed with a review of the findings of fact and decisions of the impartial hearing officer; and federal regulations require a State Review Officer to examine the entire hearing record prior to rendering a decision (see 34 C.F.R. § 300.514[b][2][i]).

In this case, petitioner is aware, or should be aware, of the procedural requirements associated with practice on review of hearings for students with disabilities, having both received admonishment and faced dismissal for previous failures to comply with required procedures (Application of the Dep't of Educ., Appeal No. 06-088; Application of the Dep't of Educ., Appeal No. 05-060; Application of the Dep't of Educ., Appeal No. 05-033; Application of a Child with a Disability, Appeal No. 04-073; Application of a Child with a Disability, Appeal No. 03-055). In light of petitioner's failure to file a complete record or a copy of the impartial hearing officer's decision together with its petition, I will dismiss the petition for review without a determination of the merits of petitioner's claims (Application of the Bd. of Educ., Appeal No. 07-055; Application of the Dep't of Educ., Appeal No. 05-060).

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
August 14, 2007**

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**PAUL F. KELLY  
STATE REVIEW OFFICER**