The University of the State of New York

The State Education Department
State Review Officer
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No. 09-128

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 Patchogue-Medford Union Free School District

Appearances:
Guercio & Guercio, LLP, attorneys for respondent, Barbara P. Aloe, Esq., of counsel

DECISION

Petitioners (the parents) appeal from the decision of an impartial hearing officer which dismissed their request to be reimbursed for their son's tuition costs at the Kildonan School (Kildonan) for the 2007-08 school year. The appeal must be dismissed.

At the time of the impartial hearing in September 2009, the student was attending the district's high school (IHO Exs. II at p. 3; VIII at p. 16).[1] In Application of a Student with a Disability, Appeal No. 08-089 (2008 Decision), the parents previously interposed an appeal after an impartial hearing (Hearing 1) seeking reimbursement for the costs of tuition at Kildonan for the 2007-08 school year. In the 2008 Decision, the parents' claim for reimbursement for the cost of tuition at Kildonan for the 2007-08 school year was dismissed as moot because the district had paid for the student's tuition for the six-month period he attended Kildonan;[2] however, one matter was remanded for a new impartial hearing which was limited to the issue of the parties' dispute over whether the parents were entitled to reimbursement for the cost of the student's athletic fee at

[1] The impartial hearing officer received documents from the parties, but did not mark them for identification with numbers or letters as they were entered into the hearing record for her consideration. In a letter dated October 26, 2009, the district identified each document (with attachments) by number and, in their petition for review, the parents proposed to use the same numbering (Pet. at p. 2). In this decision, with the exception of the consecutively paginated transcript, I will cite to the documents as "IHO Exhibits" using roman numerals and in the order set forth in the district's October 26, 2009 letter. I remind the impartial hearing officer to mark documents as they are received for consideration in order to avoid confusion (see 8 NYCRR 200.5[j][5][v]).

[2] Upon his removal from Kildonan in February 2008, the student attended the Sappo School (Sappo) for the remainder of the 2007-08 school year, and the district reimbursed the parents for the tuition costs at Sappo (Application of a Student with a Disability, Appeal No. 08-089).

Kildonan for the 2007-08 school year (Application of a Student with a Disability, Appeal No. 08-089). The parties' familiarity with the facts underlying the 2008 Decision is presumed and will not be repeated here in detail.

Following the issuance of the 2008 Decision, a new impartial hearing officer was appointed, the issue regarding the athletic fee was heard, and the parties ultimately settled the parents' claim for the athletic fee (Tr. pp. 23-27).

In a due process complaint notice dated September 3, 2009 (September 2009 claim), the parents alleged that they had not been fully reimbursed by the district for the costs of the Kildonan tuition for the 2007-08 school year and that the district indicated that the "remaining amount" was not part of Hearing 1 (IHO Ex. II at pp. 4-5). The parents alleged that they were owed additional amounts because the district "failed to enter into contract" with Kildonan in a timely manner, which resulted in additional costs to the parents (id.).

An impartial hearing officer was appointed and the district submitted a response to the parents' September 2009 claim and a "notice of insufficiency/motion to dismiss" (IHO Exs. VI-VII). In its motion to dismiss the parents' September 2009 claim, the district alleged that the parents were attempting to impermissibly relitigate prior claims because the parents had previously raised the issue of unpaid tuition costs for the 2007-08 school year in Hearing 1 and, thereafter, sought the same relief from a State Review Officer (IHO Ex. VII at pp. 2-3).[3] The district alleged that the parents were barred by the doctrine of collateral estoppel and/or res judicata from seeking further relief and requested that the impartial hearing officer dismiss the parents' September 2009 claim (id. at pp. 3-4).

In a response to the district's motion to dismiss, the parents asserted that the student had "gotten in trouble outside of school and was removed from the Kildonan School" in February 2008 (IHO Ex. VIII at p. 2). The parents also alleged that they entered into a "parental agreement" with Kildonan to pay the full tuition for the 2007-08 school year in November 2007, but that the district reimbursed them for the six months he attended Kildonan only and failed to reimburse them for the balance that they had to "pay out" (id. at pp. 2-3). The parents argued that they were not able to file an amended due process complaint notice in Hearing 1 and that the State Review Officer was unable to address the issue in the 2008 Decision (id. at p. 3).

A prehearing conference was convened on September 30, 2009 to clarify the issues for the impartial hearing and resolve district's dismissal motion (Tr. pp. 1, 6-7; see 8 NYCRR 200.5[j][3][xi]). During the prehearing conference, the student's father clarified that he was separately seeking reimbursement for the four-month portion of the 2007-08 school year that the student did not attend Kildonan (March 2008 through June 2008) (Tr. pp. 34, 43, 77).[4] The student's father also asserted that the district was obligated to pay for the full 10-month school year of tuition costs at Kildonan pursuant to a 2005 "stipulation of agreement" and that the district had

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[3] The parents were represented by counsel at Hearing 1 only and thereafter proceeded pro se (Tr. pp. 27, 84).

[4] The parents did not indicate specific dates for which they were seeking tuition reimbursement relief, either in their prior appeal or in the instant case; however, a reasonable inference can be drawn from the hearing record as a whole that the parents are seeking reimbursement for the cost of tuition at Kildonan from the time the student was removed from the school in February 2008 until the conclusion of the 2007-08 school year. In this decision, I will refer to this period as the "March 2008 through June 2008" period.

failed to comply with the stipulation, thereby causing the parents damages (Tr. p. 73; see IHO Ex. VIII at pp. 37-61).[5]

At the prehearing conference, the impartial hearing officer determined that she could not decide issues that had been decided previously by another impartial hearing officer and that had been appealed and decided by a State Review Officer (Tr. pp. 15, 18, 36, 69). Therefore, the impartial hearing officer dismissed the parents' September 2009 complaint and stated that "the decision to dismiss is on the record" (Tr. p. 94). The impartial hearing officer did not issue a written decision.[6]

The parents appeal, contending that the 2005 stipulation of agreement required the district to fund the student's placement at Kildonan for the entire 2007-08 school year. The parents assert that their claim for the four months of Kildonan tuition for which they did not obtain reimbursement (March 2008 through June 2008) could not be heard during Hearing 1. The parents argue that the language in the 2008 Decision stating that the parents had received "most" of the relief they sought with respect to their previous tuition reimbursement claim supports their position that they may be entitled to additional reimbursement relief related to the tuition costs at Kildonan (see Application of a Student with a Disability, Appeal No. 08-089). The parents further assert that the 2008 Decision did not address whether the parents were entitled to additional reimbursement for the costs of tuition at Kildonan for the period of March 2008 through June 2008. The parents also contend that the impartial hearing officer should have sought an interpretation of the 2008 Decision from the State Review Officer prior to dismissing the September 2009 complaint. For relief, the parents seek a determination that the 2008 Decision rendered in August 2008 did not address tuition reimbursement at Kildonan from March 2008 to June 2008, and an order annulling the impartial hearing officer's decision and remanding the matter for an impartial hearing on the merits.

In its answer, the district alleges that the petition for review is defective insofar as it does not comply with the practice requirements set forth in State regulations.[7] The district argues that the 2005 stipulation of agreement did not obligate the district to enter into contracts with private schools and did not require the district to pay tuition costs for any time periods that the student was not actually enrolled in or attending a private school. According to the district, if the parents are owed any money, then the parents should recover the money from Kildonan and, therefore, equitable considerations favor the district. The district contends, among other things, that: (1) the issue raised by the parents in this appeal was raised and decided in the 2008 Decision; (2) the parents are not entitled to seek money damages in proceedings brought under the Individuals with Disabilities Education Act (IDEA); (3) the parents are not entitled to further relief from the district based upon the principle of accord and satisfaction; and (4) the parents' claim for tuition

[5] The district submitted a reply to the parents' response and the parents submitted a further response to the district's reply (IHO Exs. XI; XIII).

[6] Upon review of the record on appeal, I find that the record does not show that the impartial hearing officer issued written findings and a decision dismissing the parents' September 2009 claim that comported with the requirements of 8 NYCRR 200.5(j)(5) and 200.5(j)(5)(v). I remind the impartial hearing officer to comply with these provisions in State regulations when conducting impartial hearings.

[7] I remind the parents to comply with the practice regulations before the Office of State Review, including the requirement that pages in their pleadings be consecutively numbered and that each allegation in their pleadings be set forth in separately numbered paragraphs (8 NYCRR 279.8[a][3]-[4]).

reimbursement at Kildonan from March 2008 to June 2008 is barred by the doctrine of collateral estoppel and/or res judicata and/or the finality provisions in the IDEA. As a result, the district urges affirmance of the impartial hearing officer's determination and dismissal of the parents' petition.

Before turning to the parents' contentions as raised in the petition for review, a procedural matter must be addressed. The doctrine of res judicata "precludes parties from litigating issues 'that were or could have been raised' in a prior proceeding" (Perez v. Danbury Hosp., 347 F.3d 419, 426 [2d Cir. 2003]; Murphy v. Gallagher, 761 F.2d 878, 879 [2d Cir. 1985]; Grenon v. Taconic Hills Cent. Sch. Dist., 2006 WL 3751450, at *6 [N.D.N.Y. Dec. 19, 2006]; Application of a Student with a Disability, Appeal No. 09-025; Application of a Student with a Disability, Appeal No. 08-093; Application of a Student with a Disability, Appeal No. 08-076; Application of a Child with a Disability, Appeal No. 07-093; Application of a Child with a Disability, Appeal No. 06-100; Application of a Child with a Disability, Appeal No. 05-072; Application of a Child with a Disability, Appeal No. 04-099). The rule applies not only to claims actually litigated, but also to claims that could have been raised in the prior litigation. The rationale underlying this principle is that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again (In re Hunter, 4 N.Y.3d 260, 269 [2005]). "[P]rinciples of res judicata require that 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy'" (Chen v. Fischer, 6 N.Y.3d 94, 100 [2005] quoting O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 [1981]; In re Hunter, 4 N.Y.3d at 269; see Ross v. Board of Educ. of Tp. High Sch. Dist. 211, 486 F.3d 279, 283 [7th Cir. 2007] [describing a transaction as a "common core of operative fact"]; see also Waldman v. Village of Kiryas Joel, 207 F.3d 105, 110-11 [2d Cir. 2000] [holding that plaintiff cannot avoid the preclusive effect of res judicata by splitting a claim into various suits with overlapping facts]; Cameron v. Church, 253 F. Supp. 2d 611, 620 [S.D.N.Y. 2003]). Res judicata applies when: (1) the prior proceeding involved an adjudication on the merits; (2) the prior proceeding involved the same plaintiff or someone in privity with the plaintiff; and (3) the claims alleged in the subsequent action were, or could have been, raised in the prior proceeding (Grenon, 2006 WL 3751450, at *6).

In asserting their claims for relief during their prior appeal, the parents sought, among other things, "full and complete reimbursement" from the district for "all of the monies paid" by the parents for "[any] educational expense" (IHO Ex. VII at p. 26; see Application of a Student with a Disability, Appeal No. 08-089). During the prior appeal, the parents also submitted, for the first time on appeal, a two-page excerpt from the 2005 stipulation of agreement that was identified as "Pet. Ex. 8" (Application of a Student with a Disability, Appeal No. 08-089; see IHO Ex. VII at pp. 70-72). The district objected to the submission of additional evidence on appeal, and it was not considered because although it was available, the parents failed to offer this document for consideration during Hearing 1 (Application of a Student with a Disability, Appeal No. 08-089). However, the matter of tuition reimbursement for the student's attendance at Kildonan for the entire 2007-08 school year was nevertheless addressed and dismissed as moot (id.).

Although the parents provided additional clarity regarding the nature and the extent of the tuition reimbursement relief they sought during the September 2009 prehearing conference and a full copy of the 2005 stipulation of agreement was submitted for the impartial hearing officer's consideration (IHO Ex. VIII at pp. 37-61), I find that both the parents' new explanation that they were seeking reimbursement for the time that the student was not attending Kildonan and the 2005

stipulation of agreement they submitted at the impartial hearing in this case were intertwined with their earlier request for tuition reimbursement for the 2007-08 school year in Hearing 1 such that it was part of the same transaction or series of transactions.[8] Furthermore, I note that after conceding that they had been reimbursed for the tuition for the student's attendance at Kildonan, the parents' were asked during Hearing 1 whether there were "any outstanding issues that [could] be resolved in an impartial hearing for the 2007-2008 school year" and the only remaining issue they identified was the athletic fee (IHO Ex. VII at pp. 104, 107-08; see Application of a Student with a Disability, Appeal No. 08-089). In view of the forgoing evidence, I find that these matters could have and should have been raised and litigated during Hearing 1.[9] Accordingly, I find that the parents' claim for additional tuition reimbursement for Kildonan is barred by the doctrine of res judicata.

Furthermore, a State Review Officer decision is final and binding upon the parties unless appealed in a civil action (20 U.S.C. § 1415[i][1][a]; 34 C.F.R. §§ 300.514[d]; 300.516; 8 NYCRR 200.5[k][3]). Therefore, the 2008 Decision dismissing the parents' tuition reimbursement claims for the entire 2007-08 school year as moot is final and binding upon the parties unless one of the parties seeks judicial review (Application of a Student with a Disability, Appeal No. 08-089; see Application of the Bd. of Educ., Appeal No. 07-055). To the extent that the parents' 2009 claim and the petition for review in this case may be interpreted as a request to reopen the 2008 Decision, I note that an application to reopen or reargue a prior decision of a State Review Officer is expressly prohibited by State regulations (8 NYCRR 276.8[d]).

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
December 14, 2009

PAUL F. KELLY
STATE REVIEW OFFICER

[8] The parents' October 2007 due process complaint notice in Hearing 1 indicated that the parents were seeking reimbursement for the costs of the student's "attendance" at Kildonan; however, the parents, who were represented by counsel at the time, did not seek to amend their due process complaint notice in that proceeding, even though the student was removed from Kildonan approximately five months before Hearing 1 convened (IHO Ex. VII at p. 46).

[9] Although the parents, through their counsel, acknowledged at Hearing 1 that they had received reimbursement from the district for the costs of the student's attendance at Sappo for the March 2008 though June 2008 time period (IHO Ex. VII at p. 104), when asked about any remaining issues, they did not clarify that they were also seeking additional tuition reimbursement related to Kildonan for the same March 2008 though June 2008 time period (see id. at pp. 107-08; Application of a Student with a Disability, Appeal No. 08-089).