The University of the State of New York

The State Education Department
State Review Officer
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No. 11-085

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 student with a disability

Appearances:
Michael Best, Special Assistant Corporation Counsel, attorneys for petitioner, Diane da Cunha, Esq., of counsel

Mayerson & Associates, attorneys for respondents, Gary S. Mayerson, Esq., of Counsel

DECISION

Petitioner (the district) appeals from the decision of an impartial hearing officer which found that it failed to offer an appropriate educational program to respondents' (the parents') son and ordered it to reimburse them for a portion of their son's tuition costs at the Rebecca School, to fund the student's related services of occupational therapy (OT) and speech-language therapy, and to pay for the student's applied behavior analysis (ABA) services for the 2010-11 school year. The appeal must be dismissed.

At the time of the impartial hearing, the student was attending the Rebecca School (Tr. p. 16). The Commissioner of Education has not approved the Rebecca School as a school with which school districts may contract to instruct students with disabilities (see 8 NYCRR 200.1[d], 200.7). The student's eligibility for special education and related services as a student with a speech or language impairment is not in dispute in this appeal (see 34 C.F.R. § 300.8[c][11]; 8 NYCRR 200.1[zz][11).

Background and Due Process Complaint Notice

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

Briefly, on April 20, 2010, the Committee on Special Education (CSE) convened to develop an individualized education program (IEP) for the student's upcoming 2010-11 school year (Dist. Ex. 3).[1] The CSE recommended that the student attend a 12-month program in a 6:1+1 special class in a special school with related services (id. at pp. 1, 20).

The parents disagreed with the CSE's recommendations and consequently filed a due process complaint notice asserting that the district failed to offer the student a free appropriate public education (FAPE) for the 2010-11 school year due to numerous procedural and substantive errors that were detailed in the complaint (Dist. Ex. 1). As a remedy, the parents requested that the district pay for the student's tuition and transportation to the Rebecca School for the 2010-11 school year, twelve hours per week of ABA therapy, three hours per week of 1:1 speech-language therapy, five hours per week of 1:1 OT, and three hours per week of physical therapy (PT) (id. at p. 7). The parents stated that in the interim, they "invoke[d] [the student's] pendency entitlements" pursuant to a 2009 "final and unappealable" decision by another impartial hearing officer (id.; see Parent Ex. B).[2] The parents further stated that the student's pendency entitlements included placement and costs at the Rebecca School, five hours per week of 1:1 speech-language therapy, five hours per week of 1:1 OT, and twelve hours per week of 1:1 ABA therapy, all as part of a 12-month program (Dist. Ex. 1 at p. 7).[3]

Impartial Hearing Officer's Decision

An impartial hearing convened on August 11, 2010 to determine the student's pendency (stay put) placement (Tr. pp. 1-9). In an interim decision dated September 16, 2010, the impartial hearing officer determined that the special education program and services provided in the prior unappealed 2009 impartial hearing officer decision constituted the student's pendency placement (Interim IHO Decision at p. 3). The impartial hearing officer ordered that until the case was "decided on its merits" the district was to reimburse the parents for tuition at the Rebecca School, pay for 12 hours per week of ABA services, issue a related services authorization (RSA) for five hours per week of 1:1 OT services and five hours per week of 1:1 speech-language services, and pay for the cost of transportation (id.). At the impartial hearing, the parties did not dispute that the student's pendency placement arose from the 2009 impartial hearing officer's decision (Tr. pp. 4-5).

[1] The hearing record contains duplicative exhibits. For purposes of this decision, only District exhibits were cited in instances where both District and Parent exhibits were identical. I remind the impartial hearing officer that it is her responsibility to exclude evidence that is irrelevant, immaterial, unreliable, or unduly repetitious (see 8 NYCRR 200.5[j][3][xii][c]).

[2] In the due process complaint notice, the parents reference the prior impartial hearing officer's decision as being dated January 23, 2009; however, the hearing record contains only an "amended" decision dated February 13, 2009 and does not reference the January 2009 date (Dist. Ex. 1 at p. 7; Parent Ex. B at p. 8; see Tr. pp. 4-5).

[3] Although the parents did not specify in their due process complaint notice that transportation of the student to and from the Rebecca School was part of the student's pendency and this issue was not previously litigated, I note that the district provided transportation to the student during the 2009-10 school year and the parents asserted at the impartial hearing that it should continue to be provided (Tr. p. 7; see Dist. Ex. 1 at p. 7; see also IHO Decision at p. 3).

The impartial hearing reconvened on November 1, 2010, and concluded on April 7, 2011, after five days of proceedings (Tr. pp. 10-651). By decision dated June 13, 2011, the impartial hearing officer rendered a decision on the merits of the case and found, among other things, that the district failed to offer the student a FAPE for the 2010-11 school year because: (1) the CSE failed to conduct a functional behavioral analysis (FBA) of the student; (2) the CSE failed to provide a behavioral intervention plan (BIP) for the student; (3) the CSE failed to provide a transition plan for the student;; and (4) the district was late in mailing an RSA to the parents (IHO Decision at pp. 14-15). The impartial hearing officer also found that the parents met their burden of establishing that the Rebecca School "combined with the supplementary at home services" was appropriate for the student (id. at p. 16). The impartial hearing officer further determined that the parents cooperated with the CSE and that the parents therefore prevailed with respect to equitable considerations (id.).

However, the impartial hearing officer further found that the Rebecca School program was not sufficient to warrant an award of full tuition reimbursement because the Rebecca School had "shifted the academic burden" to the student's after school providers in speech-language therapy and OT, and the "economic burden" to the district (IHO Decision at p. 16). The impartial hearing officer concluded that with seven OT therapists and seven speech-language therapists on-site at the Rebecca School, "the program was poised to offer a full complement of related services" and that the failure to provide longer sessions to the student so that his home services could be eliminated constituted a sufficient basis to reduce tuition reimbursement (id. at p. 17). Specifically, she determined that it was "reasonable and appropriate" to reduce the tuition reimbursement award by the amount that the district had paid to the student's after school providers for speech-language therapy and OT (id.). Accordingly, the impartial hearing officer ordered that the district reimburse the parents for tuition at the Rebecca School less the amount paid to the student's speech-language and OT after school providers, issue RSAs on a 52-week basis for 5 hours per week of 1:1 OT and five hours per week of speech-language therapy, pay for twelve hours per week of ABA services, and provide transportation to and from the Rebecca School (id. at pp. 17-18).

Appeal for State Level Review

This appeal by the district ensued. The district alleges the impartial hearing officer's decision should be overturned because: (1) the district offered the student a FAPE; (2) the parents failed to establish that the Rebecca School combined with the supplementary at-home services was an appropriate placement for the student; (3) the parents failed to establish that the at-home services were necessary for the student's educational progress; and (4) equitable considerations disfavor an award of tuition reimbursement in whole or in part. The district also alleges that tuition reimbursement for the Rebecca School is not an available remedy to the parents under the Individuals with Disabilities Education Act (IDEA) because the Rebecca School is a for-profit school. The district further argues that the appeal is not moot and that the district has a legally cognizable interest in a decision on the merits because a decision in its favor would change the student's pendency placement from the Rebecca School with additional at-home services to a public school placement going forward, and thereby relieve the district of any future obligations to fund the Rebecca School and home services. The district also alleges that the matter is not moot because it is capable of repetition yet evades review, and because the district should be declared the prevailing party and should not be liable to pay attorneys' fees.

In their answer, the parents deny many of the substantive allegations of the district and assert that the impartial hearing officer properly determined that the district failed to offer the student a FAPE, that the Rebecca School program supplemented with at-home services was appropriate for the student, and that the parents cooperated with the CSE. The parents also assert that the impartial hearing officer erroneously reduced the amount of tuition costs reimbursable to the parents, but state that they are not cross-appealing that determination because "the vast majority of [the student's] program and placement at the Rebecca School was paid for under pendency." The parents also assert that the district's appeal has become moot because the student's "entire placement and program was paid under pendency." The parents request that the impartial hearing officer's decision and award be affirmed on appeal.

The district submitted a reply in response to additional documents submitted by the parents with their answer.

The district subsequently notified the Office of State Review of the decision in New York City Dep't of Educ. v. V.S., 2011 WL 3273922 (E.D.N.Y. July 29, 2011), which was rendered after the petition was filed in this appeal.

Applicable Standards and Discussion

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 under pendency and that the 2010-11 school year at issue has expired,[4] which raises the question of whether the instant appeal has been rendered moot by the passage of time. As stated above, the district asserts that the instant appeal is not moot (Pet. ¶ 27; citing Pawling Cent. Sch. Dist. v. N.Y.S. Educ. Dep't, 3 A.D.3d 821, 823-24 [3rd Dept. 2004] and Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84-85 [2d Cir. 2005]). However, 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 2010-11 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 district's 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 State Review Officers have long held in administrative reviews of impartial hearing officer decisions, the dispute between the parties in an appeal must at all stages be "real

[4] I note that in their due process complaint notice as relief, the parents sought three hours per week of 1:1 PT; however, they did not seek this service pursuant to pendency and the impartial hearing officer did not order PT as part of the student's pendency placement in her interim decision (Tr. pp. 4-5; Dist. Ex. 1 at p. 9; Interim IHO Decision at p. 3; see Parent Ex. B at pp. 7-8). Moreover, the parents averred in their answer that the student received PT (two hours per week for 30 minutes each session) at the Rebecca School, and that this appeal is moot because the student's "entire placement and program was paid under pendency" (Answer ¶¶ 6, 25). Since it appears that all of the PT services that the parents actually obtained were funded pursuant to the district's pendency obligation and the parents have not cross-appealed any portion of the impartial hearing officer's decision, there is no further need to address the parents request for 1:1 PT services under the circumstances of this case.

and live," and not "academic," or it risks becoming moot (see Lillbask 397 F.3d 77 at 84; 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 2010-11 school year. Here, even if a determination on the merits demonstrated that the district did offer the student a FAPE for the 2010-11 school year, in this instance, it would have no actual effect on the parties because the 2010-11 school year expired on June 30, 2011, and the student remained entitled to his pendency placement at the Rebecca School funded by the district through the conclusion of the administrative due process. Accordingly, the district's claims for the 2010-11 school year need not be further addressed here. A State Review Officer 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. (2011 WL 3273922), the court held that in Application of the Dep't of Educ., Appeal No. 10-041, the State Review Officer 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 a State Review Officer 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.[5]

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);[6] however, this rationale regarding future pendency may be read so broadly as to apply to virtually any and all Individuals with Disabilities Education Act (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. Sch. 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

[5] Although State Review Officers 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 a State Review Officer (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]).

[6] 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 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]).

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 [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 a State Review Officer'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]).[7] 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]).[8]

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 plan designed to offer the student a FAPE in the public schools (see 20 U.S.C. § 1414[d][4][A]; 34 C.F.R. § 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.[9]

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

[7] 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 State Review Officer erred in dismissing the case on mootness grounds (V.S., 2011 WL 3273922, at *10). The Court in M.N. only acknowledged the State Review Officer issued the decision on mootness grounds and did not further comment.

[8] 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.

[9] Moreover, this is also not a case in which particularly new or novel issues have been presented on the merits. Both State Review Officers 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.[10] For the forgoing reasons, I decline to find that the parent's claim for tuition reimbursement for the 2010-11 school year continues to be a live controversy.

Exception to Mootness

With respect to the mootness exception, the district argues that even if a State Review Officer initially concludes that this matter is moot, it should still entertain the appeal because the matter is capable of repetition yet evades review. However, the hearing record fails to contain evidence or an offer of additional evidence to support this contention. While it may be theoretically possible that the parents could challenge a subsequent school year's IEP and seek tuition reimbursement for the student during a subsequent school year at the Rebecca School, 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. Additionally, each year the elements of a tuition reimbursement claim must be analyzed separately (see Mrs. C. v. Voluntown Bd. of Educ., 226 F.3d 60, 67 [2d Cir. 2000] [examining the prongs of the Burlington/Carter test separately for each school year at issue]; Snyder v. Montgomery County Pub. Schs., 2009 WL 3246579, *9-*10 [D.Md. Sept. 29, 2009]; Omidian v. Bd. of Educ., 2009 WL 904077, at *21-*26 [N.D.N.Y. Mar. 31 2009] [analyzing each year of a multi-year tuition reimbursement claim separately]; Student X v. New York City Dep't of Educ., 2008 WL 4890440, at *16 [E.D.N.Y. Oct. 30, 2008]; Application of the Bd. of Educ., Appeal No. 09-071; Application of the Bd. of Educ., Appeal No. 09-055). 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).

I am also not persuaded that the matter is not moot based on the district's request to be declared the prevailing party such that it is not liable to pay attorneys' fees. The IDEA does not authorize an administrative officer to award attorneys' fees or other costs to the prevailing party; and entitlement, if any, to costs must be determined by a court of competent jurisdiction (see 20 U.S.C. § 1415[i][3][B]; Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 402 F.3d 332 [2d Cir. 2005]; see also B.C. v. Colton-Pierrepont Cent. Sch. Dist., 2009 WL 4893639, at *2 [2d Cir. Dec. 21, 2009]; Application of a Student with a Disability, Appeal No. 11-027; Application of the Bd. of Educ., Appeal No. 09-081).

[10] For example, the Second Circuit has determined that an exhaustive analysis by the impartial hearing officer 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).

Conclusion

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

THE APPEAL IS DISMISSED.

Dated: **Albany, New York**
September 16, 2011

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JUSTYN P. BATES
STATE REVIEW OFFICER