



The University of the State of New York

The State Education Department

State Review Officer

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No. 11-097

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, Neha Dewan, Esq., of counsel

Partnership for Children's Rights, attorneys for respondent, Scott R. Hechinger, Esq., Dalit Paradis, 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 respondent's (the parent's) son and ordered it to pay her son's tuition costs at the Cooke Center for Learning and Development (Cooke) for the 2010-11 school year. The appeal must be dismissed.

At the time of the impartial hearing, the student was attending Cooke (Tr. p. 417). The Commissioner of Education has not approved Cooke 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 proceeding (see 34 C.F.R. § 300.8[c][11]; 8 NYCRR 200.1[zz][11]).

Background and Procedural History

Upon review and consideration of the hearing record, 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, the Committee on Special Education (CSE) convened on February 2, 2010 to develop an individualized education program (IEP) for the student's upcoming 2010-11 school year (Dist. Ex. 4). The February 2010 CSE recommended that the student be placed in a 12:1+1 special class in a specialized school with a 12-month program for related services of one 45-minute session per week of individual speech-language therapy, two 45-minute sessions per week of small group speech-language therapy, one 45-minute session per week of individual counseling, and one 45-minute session per week of small group counseling (id. at pp. 1, 11).

By letter dated June 11, 2010, the parent advised the CSE that she had not received information identifying the school to which the district would assign the student for the 2010-11 school year (Parent Ex. I). The parent also notified the district that "absent a timely appropriate public school placement," the student would attend Cooke's summer program and that tuition would be requested from the district (id.). Thereafter, by notice dated June 15, 2010, the district summarized the recommendations made by the February 2010 CSE and notified the parent of the school to which the district had assigned the student for the 2010-11 school year (Dist. Ex. 3). The parent, along with the Assistant Head of Cooke, visited the assigned school later in June (Tr. pp. 314-15; 423-34).

By letter dated June 28, 2010, the parent advised the CSE that for a number of reasons she would reject the placement at the assigned school and that the student would attend the summer program at Cooke (Parent Ex. J at pp. 1-2). By letter dated August 20, 2010, the parent advised the CSE that, among other things, she was rejecting the February 2010 CSE's recommended placement of the student in a 12:1+1 "specialized" class in a specialized school as such a class would not provide the "small group" and "particular" instruction that the student required to learn (Parent Ex. K). The parent also advised the CSE that the student would continue to attend Cook for the September 2010 through June 2011 school year and that she intended to seek funding for the 2010-11 school year from the district (id.).

Due Process Complaint Notice

By due process complaint notice, the parent requested an impartial hearing and asserted that the district did not offer the student a free appropriate public education (FAPE) for the 2010-11 school year due to procedural and substantive errors that were detailed in the due process complaint notice (Dist. Ex. 1 at pp. 1, 2).¹ As relief, among other things, the parent requested that the impartial hearing officer find that the district failed to offer the student a FAPE for the 2010-11 school year, that Cooke was an appropriate placement for the student, and that equitable considerations favored the parent (id. at p. 5). With respect to a remedy, the parent requested that the impartial hearing officer order the district to make payment "on a prospective basis" directly to Cooke (id.). The parent also requested that the impartial hearing officer determine that the student's pendency placement was Cooke (id. at pp. 2, 5).

¹ I note that the hearing record contains multiple duplicative exhibits. For purposes of this decision, only District exhibits are cited in instances where both a Parent and a District exhibit were identical. I remind the impartial hearing officer that it is his obligation to exclude evidence that he determines to be irrelevant, immaterial, unreliable, or unduly repetitious (see 8 NYCRR 200.5[j][3][xi][c]).

Impartial Hearing Officer Decision

The impartial hearing convened on March 22, 2011 and concluded on May 23, 2011, after four days of proceedings (Tr. pp. 1, 15, 141, 361, 511). During the impartial hearing, the impartial hearing officer found that Cooke was the student's pendency placement for the 2010-11 school year as the result of an unappealed from impartial hearing officer decision issued in December 2009 (see Tr. pp. 39-42). The impartial hearing officer subsequently issued a pendency determination dated June 23, 2011 which ordered that the district make pendency payments to Cooke (see IHO Ex. I at p. 3).

In a decision dated July 6, 2011, the impartial hearing officer found that the district failed to offer the student a FAPE, determined that the parent's unilateral placement of the student at Cooke was appropriate, and found that equitable considerations did not support a limitation in the parent's award (IHO Decision at pp. 10, 17-18, 18-19). The impartial hearing officer ordered the district to pay Cooke the student's tuition for the period July 1, 2010 through June 30, 2011 (id. at p. 19).

With respect to his finding that the district failed to offer the student a FAPE for the 2010-11 school year, the impartial hearing officer concluded that the February 2010 CSE had insufficient evaluative information relative to the student's present levels of performance at the time of the February 2010 CSE meeting in order to develop an IEP that accurately reflected the student's special education needs (IHO Decision at p. 11). The impartial hearing officer additionally found that the February 2010 IEP did not include specific annual goals to address the student's attentional difficulties and deficits in critical thinking and further, that the annual goals in the February 2010 IEP with respect to English language arts, written expression, math, speech-language, counseling, and transition failed to include methods to measure the student's progress toward meeting the annual goals in those areas (id. at pp. 14, 15). The impartial hearing officer also found that to the extent to which the lack of sufficient evaluative information considered by the February 2010 CSE and the February 2010 IEP's inadequate annual goals were "procedural," such errors impeded the student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a FAPE to the student, and caused a deprivation of educational benefits (id. at pp. 14, 15-16; see 20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]). The impartial hearing officer further found that the district's recommended program at the assigned school "was not reasonably calculated to address the student's significant academic delays and transition services needs" (IHO Decision at p. 16).

With respect to the appropriateness of the parent's unilateral placement, the impartial hearing officer found that Cooke had provided the student with instruction that was appropriately "designed to address [the student's] unique learning needs and that the student demonstrated progress while attending that placement" (IHO Decision at p. 17). Regarding equitable considerations, the impartial hearing officer found that the parent had provided the district with adequate notice of her intent to place the student at Cooke for the 2010-11 school year at public expense, that there was no contention that the student's tuition at Cooke was unreasonable, and that the fact that the parent had signed an enrollment contract with Cooke prior to her receipt of the district's final notice of recommendation was insufficient by itself to deny the parent's claim (id. at p. 19).

Appeal for State-Level Review

The district appeals, requesting that the decision of the impartial hearing officer be reversed. Citing New York City Dep't of Educ. v. V.S., 2011 WL 3273922 (E.D.N.Y. July 29, 2011), the district asserts that while it has already made payment of the student's tuition for the entire 2010-11 12-month school year, the case is not moot because a decision on the merits of the case will affect its pendency obligations during future litigation. With respect to the merits, the district asserts that it offered the student a FAPE and that the impartial hearing officer's decision to the contrary reflected errors. In particular, the district asserts that (1) it relied upon and considered sufficient evaluative information, (2) it developed appropriate annual goals for the student in his identified areas of need, and (3) it offered the student an appropriate program at the assigned school and classroom and that the impartial hearing officer's conclusions with respect to the program's ability to address the student's academic delays and transition services needs in the assigned school and classroom were not correct. The district also asserts that the impartial hearing officer should not have considered the issues relating to the annual goals on the February 2010 IEP as the parent did not raise these issues in the due process complaint notice. The district further asserts that any errors relating to a reevaluation were de minimus and that such errors did not impede the student's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process, or cause a deprivation of educational benefits. To the extent that the district's errors regarding the lack of sufficient evaluative information were procedural, the district asserts that the impartial hearing officer did not determine how those errors resulted in a denial of a FAPE.

The district also disagrees with the impartial hearing officer's conclusions regarding the appropriateness of the parent's unilateral placement and equitable considerations. The district contends that the parent's placement of the student at Cooke was inappropriate because the staff at Cooke was not well qualified to work with students with disabilities, the student's goals were not individualized, and the student was not appropriately grouped at Cooke with other students. The district further alleges that equitable considerations favor the district because, among other things, the parent did not "truly consider" the recommended district placement (Pet. ¶ 84).

In her answer, the parent requests that the district's appeal be dismissed and that the impartial hearing officer's decision be upheld in its entirety. Initially, the parent objects to the district's petition for review on the basis that does not comply with the form requirements of a petition for review. With respect to the appropriateness of the district's program, the parent asserts that the impartial hearing officer properly concluded that the February 2010 CSE failed to comply with its three-year reevaluation obligations. The parent asserts that the February 2010 CSE relied on insufficient evaluative data in formulating the student's IEP and failed to adequately address the student's academic, social/emotional, and transition needs and provide for adequate annual goals. The parent further contends that these errors in the reevaluation process significantly impeded her opportunity to participate in the decision-making process regarding the provision of a FAPE to the student. The parent also contends that the annual goals in the February 2010 IEP did not address the student's needs, were not measurable, and did not include baseline performance levels. While the parent agreed that she did not raise the issue of annual goals in her due process complaint notice, she nevertheless asserts that that the matter should be considered. Additionally, the parent asserts that the impartial hearing officer's determinations regarding the appropriateness of her unilateral placement of the student at Cooke and equitable considerations should be upheld.

In its reply, the district contends among other things, that its petition for review should not be dismissed due to the procedural defense raised in the answer.

Applicable Standards and Discussion

Mootness

Initially, I must note that in this case the parents have now received under pendency all of the relief they sought at the impartial hearing and that the 2010-11 school year at issue has expired, which raises the question of whether the instant appeal has been rendered moot by the passage of time (see Pet. ¶ 4 n.2; Tr. p. 420).² As stated above, the district asserts that the instant appeal is not moot (Pet. ¶ 4 n.2; see V.S., 2011 WL 3273922 at *8, *9-*10). 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 reimbursement relief sought, and thus, the district's appeal has been rendered moot. In addition, careful consideration of the District Court's recent decision rendered in V.S., 2011 WL 3273922, 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 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

² The parent testified that the district has paid the student's tuition at Cooke since he has been attending that school (Tr. p. 420).

[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 Cooke funded by the district through the conclusion of the administrative due process. Accordingly, the district's claims, which relate to 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 in that case 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 discussed below, I respectfully decline to adopt the reasoning as set forth in V.S.³

First, the sole reason that the District Court in V.S. 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 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 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]).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

³ 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]).

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 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]).

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 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 that the State Review Officer issued the decision on mootness grounds and did not further comment.

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 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.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 *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 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, neither party argues that the exception to the mootness doctrine applies in this case. Moreover, the hearing record fails to contain evidence or an offer of additional evidence to support any such contention. While it may be theoretically

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 State Review Officers and courts have previously provided frequent guidance regarding the types of claims raised in this case.

⁸ 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).

possible that the parent could challenge a subsequent school year's IEP and seek tuition reimbursement for the student during a subsequent school year at Cooke, at this point, such is mere speculation, and 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 mootness 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).

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
October 12, 2011**

**JUSTYN P. BATES
STATE REVIEW OFFICER**