The University of the State of New York

The State Education Department
State Review Officer
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No. 13-055

**Application of a STUDENT SUSPECTED OF HAVING A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the evaluation of the student by the New York City Department of Education**

**Appearances:**
Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Alexander M. Fong, 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 a decision of an impartial hearing officer (IHO) which determined that a sufficient basis existed for respondent (the district) to evaluate the parent's son without her consent to determine his eligibility for special education and related services. The appeal must be dismissed.

### 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 300.514[c]; 8 NYCRR 200.5[k][2]).

**III. Facts and Procedural History**

The hearing record indicates that, at the time of the impartial hearing, the student—who has not been classified as a student with a disability—was attending a first grade classroom in a district school for the third consecutive year, having been retained twice (Tr. pp. 18-20; Dist Exs. 1 at p. 1; 2-4). The student's first grade teacher for the 2012-13 school year suggested that the student needed to be evaluated for eligibility for special education services because he experienced frustration when presented with new material in reading and writing that led to him acting out in class, which interfered with his academic performance (Tr. pp. 15-17, 20-21). Various interventions were attempted by the school to improve the student's academic performance for each of his three years in the first grade, including small group and computer guided reading instruction designed to address the student's needs in the areas of phonics, reading comprehension, and reading fluency (Tr. pp. 17-18, 23-25; Dist. Ex. 2). The attempted interventions were unsuccessful, primarily due to the student's refusal to engage with the interventions and his tendency to act out when frustrated (Tr. pp. 17-18, 24-25, 28; Dist. Ex. 2). The school eventually referred the student to the CSE for evaluation, for which the parent refused to grant consent (Tr. p. 21).

### A. Due Process Complaint Notice

By due process complaint notice dated January 30, 2013, the district requested an impartial hearing (Dist. Ex. 1).[1] The district alleged in part that the student had been in first grade for a number of years, continued to struggle with the first grade curriculum, and was developing behavioral issues as a result (id. at p. 1). The district requested to evaluate the student to determine "the best way we can help [him] learn and alleviate his frustration" (id.).

### B. Impartial Hearing Officer Decision

A prehearing conference was held February 25, 2013 without the parent present (Tr. pp. 1-6), after which the matter proceeded to an impartial hearing March 11, 2013 (Tr. pp. 7-31). In a decision dated March 18, 2013, the IHO granted the district's request to evaluate the student over the parent's objection (IHO Decision). The IHO found that because the district had demonstrated "an adequate basis to suspect the existence of a disability" and that it had attempted to remediate the student's difficulties with interventions prior to referring the student to the CSE for evaluation, evaluation despite the parent's objection was appropriate (id. at pp. 3-4).

## IV. Appeal for State-Level Review

The parent appeals, asserting that the district presented "false" evidence at the impartial hearing and that the evidence presented at the impartial hearing did not establish that the student has needs requiring special education or an evaluation. Rather, she contends that the student requires additional assistance with reading, but that his needs do not rise to the level of requiring special education. The parent next contends that when she requested that the student be provided with additional assistance in reading, the school principal informed her that the district did not have funds available to provide intervention services and that the parent should seek private tutoring for the student. The parent asserts that the district had not provided the student with academic interventions as represented at the impartial hearing, based on the fact that she was not aware of the interventions until the hearing date, despite being at the student's school on a regular basis. In addition, the parent states that the student could "read and write with understanding and he is excellent with math." The parent further asserts that the student's academic difficulties stemmed from the school's persistent removal of the student to the "save room," leading to him missing academic instruction.[2] The parent posits that the student's behavioral difficulties, rather than stemming from a disability, were a result of his mistreatment by lunch room aides at the school, who blamed the student for incidents initiated by other students. The parent further asserts that the district witnesses at the impartial hearing were improperly in the same room while participating telephonically in the impartial hearing and provided each other with information regarding the student.

The district answers, asserting that the hearing record demonstrated a basis for suspecting that the student is a student with a disability and established various attempts by the district to address the student's needs with interventions short of referral to the CSE for evaluation. The

[1] The copy of the due process complaint notice submitted into evidence at the impartial hearing is partially illegible, but comprehensible. I encourage the district to ensure that it puts clean copies of documents into evidence to assist in review.

[2] The district asserts that the "save room" is the in-school suspension room (Answer ¶ 23).

district asserts that the student's poor academic performance and behavioral issues were sufficient reasons to suspect a disability and warrant an evaluation of the student over parental objection. In particular, the district contends that the student's academic performance provides a reasonable basis to suspect a learning disability in the areas of reading comprehension and writing. With regard to the school's attempt to implement intervention strategies, the district argues that the student was uncooperative with providers and failed to return a permission slip for an extended day program.

## V. Applicable Standards

The IDEA places an affirmative duty on State and local educational agencies to identify, locate, and evaluate all children with disabilities residing in the State "to ensure that they receive needed special education services" (20 U.S.C. § 1412[a][3]; 34 CFR 300.111[a][1][i]; Forest Grove, 557 U.S. 230, 245 [2009]; see 20 U.S.C. § 1412[a][10][A][ii]; see also 8 NYCRR 200.2[a][7]; New Paltz Cent. Sch. Dist. v. St. Pierre, 307 F. Supp. 2d 394, 400 n.13 [N.D.N.Y. 2004]). The "child find" requirements apply to "children who are suspected of being a child with a disability . . . and in need of special education, even though they are advancing from grade to grade" (34 CFR 300.111[c][1]; see 8 NYCRR 200.2[a][7]). The purpose of the "child find" provisions of the IDEA are to identify, locate, and evaluate students who are suspected of being students with disabilities and thereby may be in need of special education and related services, but for whom no determination of eligibility has been made (see Handberry v. Thompson, 446. F.3d 335, 347-48 [2d Cir. 2006]; A.P. v. Woodstock Bd. of Educ., 572 F.Supp.2d 221, 225 [D. Conn. 2008] aff'd 2010 WL 1049297 [2d Cir. March 23, 2010]; see also 20 U.S.C. § 1412[a][3][A]; 34 CFR 300.111; 8 NYCRR 200.2[a][7]). A district's child find duty is triggered when there is "reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability" (New Paltz, 307 F. Supp. 2d at 400 n.13 [internal quotation marks and citations omitted]; see Corpus Christi Indep. Sch. Dist., 31 IDELR 41 [SEA TX 1999]).

Prior to evaluating a student, a district must provide the parent with prior written notice that "describes any evaluation procedures [the district] proposes to conduct" (20 U.S.C. §§ 1414[b][1]; 1415[b][3], [c][1]; 34 CFR 300.300[a][1][i]; 300.503[a], [b][1]; 8 NYCRR 200.5[a][1], [2], [5][i]). Subject to certain exceptions, a school district must obtain informed parental consent prior to conducting an initial evaluation (14 U.S.C. § 1414[a][1][D][i][I]; 34 CFR 300.300[c]; 8 NYCRR 200.5[b][1][i]; see Letter to Sarzynski, 51 IDELR 193 [OSEP 2008]).[3] Federal and State regulations also require the district to document in "a detailed record" its "reasonable efforts" to obtain the parent's written informed consent (8 NYCRR 200.5[b][1]; see 34 CFR 300.300[a][1][iii], [d][5]). The IDEA and federal and State regulations permit the use of consent override procedures, providing that:

> If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation . . ., or the parent fails to respond to a request to provide consent, the public agency may, but is not required

[3] Consent is defined in federal and State regulations as meaning that the parents have been informed of all relevant information in their native language or other mode of communication, that they understand and agree in writing to the activity for which consent is sought, that the written consent form fully describes the activity for which consent is sought, lists any records that will be released and the people to whom any records will be released, and further that the parent must be aware that the consent is voluntary, may be revoked at any time, and if revoked, that revocation is not retroactive (34 CFR 300.9; 8 NYCRR 200.1[l]).

> to, pursue the initial evaluation of the child by utilizing [among other options, the due process procedures], if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(34 CFR 300.300[a][3][i]; see 20 U.S.C. § 1414[a][1][D][ii][I]; 34 CFR 300.300[d][4], [5]; 8 NYCRR 200.4[a][8]; 200.5[b][1][i][b], [b][1][i][c], [b][3]).[4]

The procedure for conducting an initial evaluation provides that a group that includes the CSE and other qualified professionals may, if appropriate, conduct an initial review of existing evaluation data, including information provided by the student's parents, current classroom-based assessments and observations, and observations by teachers and related service providers (34 CFR 300.305[a][1]; 8 NYCRR 200.4[b][5][i]). Such review may take place without a meeting (8 NYCRR 200.4[b][5][i]). Based on that review and input from the student's parents, the CSE must then identify what additional information, if any, is needed to determine whether the student is a student with a disability, the student's educational needs, the student's present levels of performance, and whether the student needs special education and related services (34 CFR 300.305[a][2]; 8 NYCRR 200.4[b][5][ii]). If additional data is needed, the school district shall administer tests and obtain other evaluation materials as may be needed to produce the needed data (34 CFR 300.305[c]; 8 NYCRR 200.4[b][5][iii]).

Any evaluation of a student with a disability must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining, among other things the content of the student's IEP (20 U.S.C. § 1414[b][2][A]; 34 CFR 300.304[b][1][ii]; see Letter to Clarke, 48 IDELR 77 [OSEP 2007]). In particular, a district must rely on technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors (20 U.S.C. § 1414[b][2][C]; 34 CFR 300.304[b][3]; 8 NYCRR 200.4[b][6][x]). A district must ensure that a student is appropriately assessed in all areas related to the suspected disability, including, where appropriate, social and emotional status (20 U.S.C. § 1414[b][3][B]; 34 CFR 300.304[c][4]; 8 NYCRR 200.4[b][6][vii]). An evaluation of a student must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified (34 CFR 300.304[c][6]; 8 NYCRR 200.4[b][6][ix]).

**VI. Discussion**

SROs have held that district requests to utilize the consent override procedures to conduct an initial evaluation of a student will be granted when the district has established an "adequate basis" to suspect the existence of a disability requiring the provision of special education services (see, e.g., Application of a Child Suspected of Having a Disability, Appeal No. 05-071; Application of a Child with a Disability, Appeal No. 03-033; Application of a Child Suspected of Having a Disability, Appeal No. 01-021; Application of a Child Suspected of Having a Disability, Appeal No. 97-54; Application of a Child Suspected of Having a Disability, Appeal No. 96-49; Application of a Child Suspected of Having a Disability, Appeal No. 95-84; Application of a Child Suspected of Having a Disability, Appeal No. 94-25; Application of a Child Suspected of Having

[4] A school district does not violate its child find or evaluation obligations if it declines to pursue the evaluation (34 CFR 300.300[a][3][ii]; 8 NYCRR 200.5[b][3]).

a Disability, Appeal No. 93-16; Application of a Child Suspected of Having a Handicapping Condition, Appeal No. 92-17; Application of a Child Suspected of Having a Handicapping Condition, Appeal No. 91-05; Application of a Child Suspected of Having a Handicapping Condition, Appeal No. 90-2). In addition, districts are required to establish what remedial interventions were undertaken to address the student's difficulty prior to the district's referral of the student to the CSE (id.; see Educ. Law § 4401-A[2][b]; 8 NYCRR 200.4[a][2][iii][b]). Hearing officers in other states have similarly held that a district must establish that it has "reason to suspect a disability" (Houston Indep. Sch. Dist., 36 IDELR 196 [SEA TX 2002]) which, as noted above, is the standard that triggers the district's child find obligation (see 20 U.S.C. § 1412[a][3]; 34 CFR 300.111[a][1][i], [c][1]; 8 NYCRR 200.2[a][1]; New Paltz, 307 F. Supp. 2d at 400 n.13). While hearing officers in some states have held that in order to utilize the consent override provision, the district must establish that the evaluations it seeks to conduct are necessary (see Pennsylvania Virtual Charter Sch., 112 LRP 27522 [SEA PA 2012]; Glendale Unified Sch. Dist., 109 LRP 45041 [SEA CA 2009]; Bangor Sch. Dep't, 109 LRP 37603 [SEA ME 2009]), in this context, "necessity" is with regard to the district's obligations under the IDEA; that is, an evaluation is "necessary" if it is required for the district to comply with its statutory obligations including child find and evaluation (see id.; see also Shelby S. v. Conroe Indep. Sch. Dist., 454 F.3d 450 [5th Cir. 2006], cert denied 549 U.S. 1111 [2007]).

Upon careful review of the entire hearing record, I find that the IHO, in a well-reasoned and well-supported decision, correctly held that the district sustained its burden to establish that it had offered remedial services to the student without effect, thereby providing an adequate basis to suspect a disability and justifying exercise of the consent override provision of the IDEA (IHO Decision at pp. 3-4). The IHO accurately recounted the facts of the case, set forth the proper legal standard to determine whether the district had established the need to evaluate the student, and applied that standard to the facts at hand (id.). Furthermore, based upon my independent review of the entire hearing record, I find that the impartial hearing was conducted in a manner consistent with the requirements of due process and that there is no reason appearing in the hearing record to modify the determinations of the IHO (20 U.S.C. § 1415[g][2]; Educ. Law § 4404[2]; 34 CFR 300.514[b][2]).

I note that there was no evidence presented that shows whether the district provided the student with any services designed to address his social/emotional or behavioral needs prior to seeking to evaluate his eligibility for special education. However, the hearing record supports the IHO's determination that the district had a reasonable basis to conclude that the student was a student with a disability that could not be remediated by provision of lesser intervention services. In particular, I note that the testimony of the district's witnesses and the documentary evidence introduced at the impartial hearing indicated that the student was noncompliant with the district's repeated attempts to provide intervention services. The student's teacher testified that the student refused to leave the classroom for intervention services, would not engage in academic exercises on the computer, and when pulled into small groups in the classroom would become frustrated and act out against other students in the group (Tr. pp. 17-18; see Tr. pp. 24-25). In addition, although the teacher sought to enroll the student in an extended day program, he never returned a signed permission slip (Tr. p. 18). Furthermore, the student's acting out behaviors when frustrated had progressed since the beginning of the school year from "shut[ting] down" to more physical behaviors (Tr. pp. 16, 20). The teacher and the school's academic intervention services supervisor (the AIS supervisor) both testified that the student was at a beginning first grade reading level, and was on a first grade level for math if materials were read to him, below where the student should

be academically (Tr. pp. 16-17, 25-26). I find that the foregoing provides sufficient evidence to support the IHO's finding that the district had an adequate basis to suspect the existence of a disability and that appropriate remedial interventions failed to adequately address the student's needs (see Application of a Child Suspected of Having a Disability, Appeal No. 01-021; Application of a Child Suspected of Having a Disability, Appeal No. 94-25). Therefore, I adopt the findings of fact and conclusions of law of the IHO as my own (see Application of a Student with a Disability, Appeal No. 10-091; Application of a Child with a Disability, Appeal No. 06-136; Application of the Bd. of Educ., Appeal No. 03-085; Application of a Child with a Disability, Appeal No. 02-096).

An evaluation in this instance will provide the district and the parent with useful information regarding the student's needs and enable the district to appropriately respond to and address those needs. It is premature to speculate as to whether the evaluation will indicate that the student requires special education services, but should the evaluations indicate the student's need for special education programs or related services, I encourage the parent to consider them openly (see, e.g., Other Consent Requirements, 71 Fed. Reg. 46635 [Aug. 14, 2006] [noting that unaddressed educational needs may lead to behavioral problems and stating that "it is reasonable for a school district to provide the parents with as much information as possible about their child's educational needs in order to encourage them to agree to the provision of special education services to meet those needs, even though the parent is free, ultimately, to reject those services]). With regard to the parent's concern that the student is too often removed from the classroom for being disruptive, I note that if he were found to be eligible for special education and related services, the district's ability to remove him from his classroom for behavioral reasons would be curtailed due to limitations on the removal of students with disabilities from the classroom (see generally 34 CFR 300.530–300.537; 8 NYCRR Part 201).

In upholding the IHO's determination, I note that the parent has raised no objection to the district's proposed evaluation of the student other than her repeated assertion that the student does not have needs requiring the provision of special education. However, the parent also admits that the student requires assistance in reading. Although not dispositive of my determination in this matter, this acknowledgment underscores the value of obtaining a full evaluation of the student's needs to assist the district in designing an educational program that meets them. However, although I concur with the IHO that the district should be permitted to evaluate the student over the parent's objection, I remind the parent that regardless of the outcome of an initial evaluation, she is under no obligation thereafter to consent to the actual provision of special education or related services and that the district may not utilize the consent override provision to overcome her refusal to consent to the provision services to her son (20 U.S.C. § 1414[a][1][D][ii][II]; 34 CFR 300.300[b][3]; 8 NYCRR 200.5[b][4]). I note that the district did not enter into the hearing record documentary evidence of its attempts to obtain the parent's consent to the evaluation in accordance with federal and State regulations prior to utilizing the due process procedures to override the parent's refusal to consent (34 CFR 300.300[a][1][iii], [d][5]; 8 NYCRR 200.4[b][8]; 200.5[b][1], [3]). Although it is clear from the hearing record that the parent refused to provide consent on several occasions, it is unclear to what extent the requests were calculated to sufficiently inform the parent. Accordingly, prior to the district conducting the evaluations it must, even if it has done so already, provide the parent with prior written notice describing the evaluation procedures it seeks to utilize to assess the student's needs and abilities (20 U.S.C. §§ 1414[b][1]; 1415[b][3], [c][1]; 34 CFR 300.300[a][1][i]; 300.503[a], [b][1]; 8 NYCRR 200.5[a][1], [2], [5][i]) and notify the parent in writing of her right to request an informal conference with the professionals familiar

with the proposed evaluation, the person who referred the student for evaluation, and an advisor or legal counsel of the parent's choice, to provide her with "an opportunity to ask questions regarding the proposed evaluation" (8 NYCRR 200.5[b][1][i][c]). The evaluation must additionally be conducted in conformity with the requirements for initial evaluations as set forth in the IDEA and State and federal regulations (20 U.S.C. § 1414[b], [c]; 34 CFR 300.301–300.311; 8 NYCRR 200.4[b], [j]).[5, 6]

## VII. Conclusion

I sympathize with the parent's concerns that her son's educational needs are not being met by the district and that he is often removed from his educational environment based on what she believes is an inequitable enforcement of school disciplinary rules. However, the testimony of professionals who have worked with the student directly indicates the possibility that the student has needs that require the provision of special education or related services to adequately be addressed. I encourage the district to engage the parent in a collaborative process and focus on the services it can provide the student to help him progress, in hopes that a result can be reached that will alleviate the parent's concerns and serve the best interests of the student.

**THE APPEAL IS DISMISSED.**

**IT IS ORDERED** that the district must provide the parent with written notice detailing and explaining each assessment it proposes to conduct, as well as notifying her that she may request a conference to ask questions of district staff regarding the evaluation; and

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[5] Areas the district may wish to assess in the initial evaluation include, but are not limited to, the student's reading and social/emotional needs.

[6] Although I uphold the IHO's decision, I briefly address how this case is distinguishable from other case law involving the override of parental consent. In the only court case from New York to directly address the issue, the Western District found that a district could not make use of the consent override procedures to evaluate a student who had been exclusively home-schooled and whose parents affirmatively asserted that they would not accept publicly-funded educational services (Durkee v. Livonia Cent. Sch. Dist., 487 F. Supp. 2d 313, 315 [W.D.N.Y. 2007]; see Application of a Child Suspected of Having a Disability, Appeal No. 05-071; see also Fitzgerald v. Camdenton R-III Sch. Dist., 439 F.3d 773, 776-77 [8th Cir. 2006] [holding that the consent override provision may not be used in the case of a home-schooled student whose parents expressly waived any services under the IDEA]). The Court went on to note that the Eighth Circuit's decision in Fitzgerald was codified in regulations effective several months after that decision was issued (id. at 317, citing 34 CFR 300.300[d][4][i] [noting that the regulations now expressly provide that a district "may not use the consent override procedures" with regard to students who are home schooled or placed in private school at parental expense]). The Court concluded that a district may not pursue evaluation over parental consent "in cases where the parent of a home-schooled child objects to the evaluation and has refused publicly-funded special education benefits" (id. at 318 [emphasis added]). As the student here has at all relevant times been enrolled in a public school program, I consider Fitzgerald and Durkee to be distinguishable and not applicable to the facts of this case. If Congress wished to permit parents of children receiving a public education to prevent use of the consent override procedures by preemptively stating their refusal to accept any special education services for their children, it is unclear why it would continue to explicitly permit the use of the consent override procedures with respect to initial evaluations while simultaneously prohibiting their use with respect to the provision of services (see 20 U.S.C. § 1414[a][1][D][ii][I], [II]). I do not consider encouraging parents to refuse special education services without having sufficient information that might be relevant to such a decision to be consistent with the purpose of the IDEA.

**IT IS FURTHER ORDERED** that, after providing the parent with written notice and an opportunity to request a conference with district staff as specified above, the district may conduct an initial evaluation of the student in conformity with State and federal regulations.

**Dated:** **Albany, New York**
**July 29, 2013**

**JUSTYN P. BATES**
**STATE REVIEW OFFICER**