



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 14-138

**Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education**

**Appearances:**

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Cynthia Sheps, 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 the decision of an impartial hearing officer (IHO) which dismissed the parent's due process complaint notice with prejudice. 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 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

### **III. Facts and Procedural History**

#### **A. Due Process Complaint Notice**

By due process complaint notice dated May 11, 2014, the parent requested that "all" of the student's grades received for the "first quarter" at a district public school be "expunged because they were given in violation of his IEP" (IHO Ex. II at p. 1). In addition, the parent sought to replace the grades the student received with the grades he received in the "home instruction school" (id.). The parent also requested that "all" of the student's absences "be medically excused so that they d[id] not negatively affect his opportunity to be accepted into another school" (id.). Next, the parent indicated that she wanted to review the student's "school records and alter any information that [was] incorrect as well as any information on his record that could negatively affect his placement opportunities to be redacted, expunged, and permanently sealed" (id.).

## **B. Events Post-Dating the Due Process Complaint Notice**

On June 2, 2014, the district submitted a motion to dismiss the parent's due process complaint notice (see IHO Ex. II at pp. 1-4). The district asserted that the parent's due process complaint notice must be dismissed because the parent's allegations about the student's grades and amendments to school records did not concern the identification, evaluation, or educational placement of the student or the provision of FAPE to the student under the IDEA, but rather, concerned claims governed by the Federal Educational Rights and Privacy Act (FERPA) (id. at pp. 2-3). As such, the district argued that the issues raised in the parent's due process complaint notice were "beyond the scope of the authority" of an IHO, and furthermore, an IHO order was not the "appropriate forum for the remedy" sought by the parent (id.).

## **C. Impartial Hearing Officer Decision**

In a decision dated July 25, 2014, the IHO found that the parent's due process complaint notice did not challenge or seek review of "any determination made relevant to [the] [s]tudent's identification, evaluation, educational placement or the provision of a [FAPE]" (IHO Decision at pp. 1-2). Accordingly, the IHO concluded that the parent's due process complaint was "beyond those instances wherein [a] [p]arent may file" a due process complaint notice, and the IHO granted the district's motion to dismiss the parent's due process complaint notice with prejudice (id. at p. 3).

## **IV. Appeal for State-Level Review**

The parent appeals, and asserts that the IHO erred in dismissing the due process complaint notice with prejudice. The parent argues that the IHO had "prior knowledge of the reasons why [she] requested an impartial hearing," the IHO failed to follow the "guidelines as set forth in the procedural safeguards," and the IHO's decision to dismiss the parent's due process complaint notice with prejudice would cause "harm" to the student's "academic functioning as well as preclude him from participating in the future in an optimal setting." The parent requests that the due process complaint notice be "dismissed without prejudice" so she can obtain the services of an attorney and have the "opportunity to bring [the due process complaint notice] back to the impartial hearing office."

In an answer, the district responds to the parent's allegations, and argues to uphold the IHO's decision in its entirety.<sup>1</sup>

## **V. Discussion**

The IDEA provides for impartial hearings and State-level reviews in matters relating to the identification, evaluation or educational placement of students, or the provision of a FAPE (20 U.S.C. § 1415[b][6][A]; 34 CFR § 300.507[a][1]; 8 NYCRR 200.5[i][1], [j][1]). A separate portion of the IDEA (20 U.S.C. § 1417[c]) requires the Secretary of Education to promulgate regulations for the protection of the rights and privacy of parents and students in accordance with the provisions of FERPA (see 20 U.S.C. §1232g). The relevant federal regulations under the IDEA

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<sup>1</sup> The parent requested, and received, additional time within which to serve and file a reply to the district's answer in this case; however, to date, no reply has been filed with the Office of State Review.

prescribe a specific procedure for challenging alleged inaccuracies in a student's educational records (34 CFR 300.618-300.621). However, IDEA regulations provide that such hearings are to be conducted in accordance with the procedures specified in 34 CFR § 99.22, rather than an impartial due process hearing under 34 CFR § 300.511 (see 34 CFR 300.621; see also Amendment of Records at Parent's Request [§ 300.618] and Opportunity for a Hearing [§ 300.619], 71 Fed. Reg. 46735-36 [Aug. 14, 2006]). In this case, as the IHO correctly found, the allegations in the parent's due process complaint notice—which sought to expunge and replace the student's grades on file; change the student's attendance records; and otherwise review, correct, redact, expunge, and permanently seal information within the student's school records—do not constitute matters relating to the identification, evaluation or educational placement of the student, or the provision of a FAPE to the student (see IHO Decision at p. 2; IHO Ex. II at p. 1). Accordingly, neither the IHO, nor the SRO, has jurisdiction over the allegations set forth in the due process complaint notice.

## **VI. Conclusion**

In summary, the IHO properly found that he had no jurisdiction with respect to the issues raised in the parent's due process complaint notice, and thus, there is no reason to disturb the IHO's decision dismissing the parent's due process complaint notice with prejudice.<sup>2</sup>

**THE APPEAL IS DISMISSED.**

**Dated: Albany, New York  
October 22, 2014**

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**CAROL H. HAUGE  
STATE REVIEW OFFICER**

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<sup>2</sup> To the extent that the parent requested an opportunity to seek an attorney and to bring the due process complaint notice back to the impartial hearing office, State regulation requires that a party must request a due process hearing within two years of when the party knew or should have known of the alleged action that forms the basis of the complaint (see 8 NYCRR 200.5[j][1][i]; see also "New York State Education Department Procedural Safeguards Notice," 15-16 [April 2014], available at <http://www.p12.nysed.gov/specialed/formsnotices/psgn/PSGN-April2014.pdf>).