STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of the
ANDES CENTRAL SCHOOL DISTRICT,

Petitioner,

For an Order and Judgment Pursuant to
CPLR Article 78

Index No. 7053-11
RJI No. 01-11-ST3144

-against-

JOHN KING, as Commissioner of the State Education Department of the State of New York; STATE EDUCATION DEPARTMENT OF THE STATE OF NEW YORK; AMY HOFFMAN, Regional Associate for the New York State Education Department; and IRA AND LAURIE McINTOSH,

Respondents.

Special Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding

Appearances:

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IRA AND LAURIE McINTOSH
Pro se Respondents
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DECISION/JUDGMENT

George B. Ceresia, Jr., Justice

Petitioner Andes Central School District (hereinafter petitioner) is the public school district within which A.M. and her parents, respondents Ira and Laurie McIntosh, reside. A.M. is classified as a student with multiple disabilities and she receives home school instruction. According to A.M.'s individualized education plan (hereinafter IEP), she qualifies for certain special education services, including physical therapy, occupational therapy, and speech therapy.

In May 2011, Ira McIntosh filed a complaint with respondent New York State Education Department (hereinafter NYSED) alleging that petitioner had repeatedly denied his requests to provide A.M. transportation to and from her special education services. In July 2011, NYSED issued a determination finding that petitioner violated federal and state laws and regulations by failing to provide A.M. transportation from her home school location to the service site at the school district building for the purpose of receiving special education services (see Verified Petition, Ex. 2). The determination directed petitioner to reimburse the McIntoshes for expenses related to the transportation of A.M. during the 2010-2011 school year, schedule a meeting to determine the appropriate level of make-up services, and

required petitioner to immediately begin transporting A.M. from her home to the site of the special education services.

Thereafter, petitioner commenced the instant CPLR article 78 proceeding to challenge NYSED's determination. NYSED answered and set forth one objection in point of law, asserting that petitioner failed to state a cause of action. The McIntoshes also answered and oppose the relief sought in the petition.

DISCUSSION

In reviewing an administrative determination, the standard to be applied by the Court is "severely limited" to the issue of whether the determination was arbitrary, capricious, or affected by an error of law (Matter of Johnson v Ambach, 74 AD2d 986, 987 [1980]; see Matter of Senior Care Servs., Inc. v New York State Dept. of Health, 46 AD3d 962, 965 [2007]). "It is well settled that a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion" (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974] [internal citations omitted]; Matter of E.W. Tompkins Co., Inc. v State Univ. of N.Y., 61 AD3d 1248, 1250 [2009], lv denied 13 NY3d 701 [2009]). Moreover, in order to maintain the limited nature of this review, it is incumbent upon the court to defer to the agency's construction of the statutes and regulations that it administers as long as that construction is not irrational or unreasonable (Matter of Metropolitan Assocs. Ltd.

Partnership v New York State Div. of Hous. & Community Renewal, 206 AD2d 251, 252 [1994]).

Petitioner contends that NYSED's determination was arbitrary, capricious and affected by an error of law. In support of its determination, NYSED cited Education Law 3602-c(2-c) and 34 CFR 300.139(b). Under Education Law § 3602-c(2-c), disabled students in a home instruction program are deemed to be nonpublic school students for the purpose of receiving special education services. Moreover, federal law requires school districts to provide "[s]ervices to parentally-placed private school children with disabilities," including transportation to and from the child's home to the site of special education services (34 CFR 300.139[b][1][i]).

Nevertheless, petitioner maintains that transportation should not be deemed a special education service because it was omitted from A.M.'s IEP. To the contrary, special education is defined as "specially designed individualized or group instruction or special services or programs . . . and **special transportation, provided at no cost to the parent**, to meet the unique needs of students with disabilities" (8 NYCRR § 200.1[ww] [emphasis supplied]). Given the foregoing language, the Court is not persuaded by petitioner's argument that a disabled home-schooled student is required to demonstrate the necessity for transportation. Simply stated, NYSED's construction of the applicable statutes and regulations is rational and reasonable. Therefore, the Court declines to disturb NYSED's determination.

Accordingly it is

ADJUDGED that the petition is dismissed and the relief requested therein is in all respects denied.

This Decision/Judgment is being returned to the Attorneys for the State respondents. All original supporting documentation is being filed with the County Clerk's Office. The signing of this Decision/Judgment shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that rule relating to filing, entry and notice of entry.

Dated: Troy, New York
April 16, 2012

George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Petition, dated November 3, 2011; Verified Petition, dated November 3, 2011, with annexed exhibits; Memorandum of Law on Behalf of Petitioner, dated November 3, 2011;
2. Verified Answer, dated February 7, 2012; Affidavit of Amy Hoffman, sworn to February 7, 2012; Memorandum of Law in Opposition to Petitioner's Article 78 Petition, dated February 7, 2012; and
3. Answer and Response to Memorandum of Law, sworn to February 10, 2012, with annexed attachments.