STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
EAST RAMAPO CENTRAL SCHOOL DISTRICT,
Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

-against-

**DECISION AND ORDER**

JOHN B. KING, Jr., in his official capacity as the Commissioner of Education of the State of New York; JAMES P. DeLORENZO, in his official capacity as Assistant Commissioner of Education of the State of New York; NEW YORK STATE EDUCATION DEPARTMENT OF THE UNIVERSITY OF THE STATE OF NEW YORK; and the NEW YORK STATE EDUCATION DEPARTMENT HUDSON VALLEY REGIONAL OFFICE OF SPECIAL EDUCATION QUALITY ASSURANCE,
Respondents.

(Supreme Court, Albany County, Special Term, September 19, 2013)
Index No. 2185-13
(RJI No. 01-13-ST4549)

(Acting Justice Michael H. Melkonian, Presiding)

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MELKONIAN, J.:

Petitioner the East Ramapo Central School District (hereinafter referred to as "petitioner" or "the district") has commenced the instant CPLR § Article 78 proceeding challenging a December 19, 2012 determination by respondents John B. King, Jr., in his official capacity as the Commissioner of Education of the State of New York; James P. De Lorenzo, in his official capacity as Assistant Commissioner of Education of the State of New York; the New York State Education Department of the University of the State of New York; and the New York State Education Department Hudson Valley Regional Office of Special Education Quality Assurance (hereinafter collectively referred to as "respondents") that petitioner did not comply with the requirements of the Individuals with Disabilities Education Act ("IDEA") and related federal and state education laws and regulations for the 2012-2013 school year. Thereafter, petitioner commenced the instant CPLR article 78 proceeding to challenge respondents' determination. Respondents move to dismiss the petition on the ground that petitioner has failed to state a cause of action.

Congress enacted the IDEA to encourage the education of children with disabilities (Bd. of Educ. v Rowley, 458 US 176, 179 [1982]). The statute mandates that any state receiving federal funds must provide a free appropriate public education ("FAPE") to disabled children (20 USC § 1412(a)(1)(A); Bd. of Educ. v Rowley, 458 US 176, 179 [1982]). The FAPE provided by the state must include "special education and related services" tailored to meet the unique needs of the particular child (20 USC § 1401(9)), and be "reasonably calculated to enable the child to receive educational benefits" (Bd. of Educ. v Rowley, 458 US 176, 207 [1982]).

The IDEA puts federal, state and local governments and agencies in partnership to ensure that the goals of the IDEA are met (see, 20 USC § 1400(1)(b)(c)). Under the IDEA, respondents are required to exercise general supervisory responsibilities to ensure proper administration of the statute (20 USC § 1412(11)(A)). In New York, the task of developing an Individualized Education Plans ("IEPs") rests with local Committees on Special Education ("CSEs"), whose members are appointed by the board of education or trustees of the school district (Education Law § 4402(1)(b)(1); Heldman on Behalf of T.H. v Sobol, 962 F.2d 148, 152 [2nd Cir.1992]). In developing a child's IEP, the CSE must consider four factors: "(1) academic achievement and learning characteristics, (2) social development, (3) physical development, and (4) managerial or behavioral needs" (Gagliardo v Arlington Cent. Sch. Dist., 489 F.3d 105, 107–08 [2nd Cir.2007]). The IEP must "be reasonably calculated to enable the child to receive educational benefits" (Gagliardo v Arlington Cent. Sch. Dist., 489 F.3d 105, 107 [2nd Cir.2007]), "likely to produce progress, not regression," and afford the student with an opportunity greater than mere "trivial advancement" (Cerra v Pawling Cent. Sch. Dist., 427 F.3d 186, 195 [2nd Cir.2005]). Furthermore, under an IEP, "education [must] be provided in the 'least restrictive setting consistent with a child's needs'" and the CSE must "be mindful of the IDEA'S strong preference for 'mainstreaming,' or educating children with disabilities 'to the maximum extent appropriate' alongside their non-disabled peers" (M.H. v NYC Dept. of Educ., 685 F.3d 217, 224 [2nd Cir.2012]) (citations omitted).

Petitioner, a Local Educational Agency ("LEA")[1] responsible for providing special education services to its students, convened resolution meetings following a parent's complaint regarding a CSE-recommended placement, and designated at least one LEA representative authorized to negotiate a settlement agreement to attend the meeting on the petitioner's behalf—usually either Art Jakubowitz, the Director of Special Student Services, or Dr. Elizabeth Cohen, Office of Special Education Services, both members of petitioner's CSE. If petitioner's representative and the parent identified a satisfactory placement in petitioner's best interest at the meeting, the parties entered into a "resolution agreement," which was subject to approval by the Board of Education ("BOE").

On August 27, 2010, respondents sent a report to petitioner, documenting the findings of respondent New York State Education Department's Hudson Valley Regional Office of Special Education Quality Assurance ("SEQA"), following an April 2010 quality assurance review of petitioner's 2009-2010 special education placements. In this regard, respondents reviewed twenty-seven IEPs[2] that were developed by petitioner's CSE for the 2009-2010 school year for compliance with the federal and state special education laws and regulations.

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[1]. The IDEA defines a Local Educational Agency ("LEA") as a public board of education or other public authority legally constituted within a state for control or direction of a school district. The District is an LEA within the meaning of the IDEA (see, 20 USC § 1401(15)(A).

[2]An IEP is a written statement, collaboratively developed by the parents, educators, and specialists, that "sets out the child's present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives" (Honig v Doe, 484 US 305, 311 [1988], superseded by statute, Joshua A. v Rocklin Unified Sch. Dist., 559 F.3d 1036 [9th Cir. 2009]).

Based upon this review, respondents found that in certain instances, petitioner had failed to document appropriate justification for the private school placements of certain students in contravention of 8 NYCRR §§§ 200.4(d)(2)(i), 200.5(a)(3), and 200.6(j)(1)(iii). More specifically, respondents found that certain IEPs did not include sufficient "prior written notice to parents," and "lacked the documentation required when seeking State reimbursement." In their report, respondents ordered petitioner to take certain corrective actions to fix the documentation problems and informed the district that respondents would be closely monitoring its resolution of the identified noncompliance.

On July 31, 2012, respondent SEQA conducted an on-site follow-up monitoring review to determine if petitioner had corrected the noncompliance identified by SEQA in the 2010 monitoring review. It found, among other things, that during the 2012–2013 school year, petitioner's CSE prepared IEPs for 2,131 special education students. Parents of approximately 30 students appealed the CSE's placement, and petitioner resolved 21 of those appeals with resolution agreements. In 14 of the 21 resolution agreements, petitioner and the parents agreed to placements in private institutions, rather than public schools. On December 19, 2012, in a letter to Dr. Joel Klein (petitioner's Superintendent), respondent James DeLorenzo (hereinafter referred to as "Mr. DeLorenzo") summarized the findings from the review of petitioner's 21 resolution agreements. This letter concluded that petitioner engaged in "patterns and practices * * * inconsistent with both federal and New York State law and regulation governing the education of students," by allowing one district representative unilaterally to determine the placement for students with disabilities at resolution meetings, which respondents found was inconsistent with laws requiring the CSE

to recommend a placement in the LRE and also evidenced a "clear intent and pattern to circumvent the [IDEA] and remove the IEP decision-making process from the CSE." In particular, respondents identified a pattern of petitioner, after parental request and resolution meetings, of placing students in out-of-district Yiddish bilingual special education programs even though the students' IEPs did not indicate a need for bilingual services. Respondents directed that petitioner must "immediately cease and desist its practice of routinely allowing one district representative to unilaterally determine the placement for students with disabilities and override CSE LRE placement recommendations" and to remand all IEP disputes to the CSE. Respondents further threatened to withhold federal special education grant money from petitioner or to take other adverse action if petitioner failed to change the way it resolved parental complaints and negotiated settlements.

On January 14, 2013, petitioner responded this letter, stating that it had "conducted itself fully in accordance with applicable law * * * with respect to the challenged special education resolution meetings and agreements * * * in a manner that is designed to serve the best interests of [petitioner's] students and taxpayers." Petitioner disputed that it engaged in a "pattern or practice" of failing to implement CSE recommendations, arguing that the twenty-one resolution agreements reviewed by respondents represented less than two percent of the CSE-recommended placements for the 2012–2013 school year. Petitioner also disagreed with respondents that the BOE (or its authorized designee) lacked the authority to amend a student's IEP to resolve a parental challenge to a CSE placement at a resolution meeting. Regarding respondents' directive that petitioner "cease and desist" unilateral changes to CSE-recommended placements at resolution meetings, petitioner argued that these

Resolution Agreements were "bilateral agreements between [petitioner's] authorized representatives (who also are members of the CSE), and parents," and respondents lacked the authority to override a BOE's discretion to resolve parental challenges to CSE recommendations.

Mr. DeLorenzo responded to petitioner on February 6, 2013, stating that respondents "[were] not dissuaded from the position it ha[d] taken" after considering petitioner's response. Respondents found "no evidence that [petitioner] conducted resolution meetings, as constituted under the federal law," and thus "[petitioner's] process for unilaterally agreeing to alternate placements * * * d[id] not have a basis in federal and [s]tate law and regulation." Respondents criticized petitioner's resolution meeting process on several grounds: (1) such meetings are to be convened only upon the filing of a due process complaint ("DPC") by the parent, yet petitioner was conducting them (a) upon receiving only a letter (not amounting to a DPC) stating that the parent disagreed with the CSE's placement recommendation and requesting a meeting and (b) without concurrently appointing an IHO[1], as is supposed to occur upon the filing of a DPC; (2) Mr. Jakubowitz and Dr. Cohen were attending the meetings as CSE representatives without having participated in the development of the relevant IEPs and thus did not qualify as "members of the IEP Team who have specific knowledge of" the student's case as required under the IDEA (20 USC § 1415(f)(1)(B)(i); (3) petitioner had conducted twelve resolution meetings in a single day, suggesting individual consideration had not been given and the meetings were pro forma

[1]Impartial Hearing Officer

exercises designed to change CSE placement recommendations to the parent's preference; and (4) there was no evidence that the practice was available to all parents of district students with disabilities. Regarding respondents' cease and desist directive, it required petitioner "to comply with federal and [s]tate law and regulations when resolving disputes with parents, in consideration of its responsibility to ensure students receive [free appropriate public education] in the LRE."

This proceeding ensued. In the petition, petitioner seeks a determination:

> "a. [s]etting aside Respondents' factual finding that [petitioner] possesses a 'clear intent and pattern to circumvent IDEA and remove the IEP decision-making process from the CSE' as unsupported by substantial evidence;[4] b. [s]etting aside Respondents' factual finding that [petitioner] has a 'pattern of placing students in out-of-districts programs for the purposes of providing a bilingual Yiddish program for the students' as unsupported by substantial evidence; c. [s]etting aside

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[4]Petitioner alleges that respondents' determination was arbitrary and capricious and not supported by substantial evidence. CPLR § 7803(4) defines a substantial evidence issue as "whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction of law is, on the entire record, supported by substantial evidence." Inasmuch as the administrative determination at issue did not involve the formal receipt of evidence submitted "pursuant to direction by law," the "substantial evidence" issue is not properly raised in this petition (Matter of Bonded Concrete v Town Bd. of Town of Rotterdam, 176 AD2d 1137, 1138 [3rd Dept. 1991]). "The mere fact that a petition alleges the lack of substantial evidence supporting the determination is not dispositive." Matter of Bonded Concrete v Town Bd. of Town of Rotterdam, 176 AD2d 1137, 1137 (3rd Dept. 1991). The standard for review of respondents' determination is therefore whether it was arbitrary and capricious (Matter of Kaufman v Anker, 42 NY2d 835, 837 [1977]).

Respondents' factual finding that Respondents were 'not able to find evidence that [the Districts's IEP dispute resolution practices are] made available to the parents of all students with disabilities in the District' as unsupported by substantial evidence; d. [s]etting aside Respondents' factual finding that [petitioner] has a practice of 'routinely allowing one District representative to unilaterally determine the placement for students with disabilities and override the CSE LRE placement recommendations[,]' as unsupported by substantial evidence; e. [s]etting aside Respondents' administrative determination that [petitioner] lacks authority to settle IEP disputes by agreeing with a student's parent to place the student in a private or public placement that may not be the least restrictive environment, as arbitrary, capricious and affected by error of law; f. [s]etting aside Respondents' administrative determination that [petitioner] lacks authority to settle parental IEP disputes by agreeing to a private or public placement that is in [petitioner's] best financial interest if the agreed placement differs from placement recommended by the CSE, as arbitrary, capricious, and affected by an error of law; g. [s]etting aside Respondents' administrative determination that [petitioner] is not permitted by law to consider parental preferences in settling parental

challenges to CSE recommended placements for their children as arbitrary, capricious, and affected by an error of law; h. [s]etting aside Respondents' administrative determination that [petitioner] has no authority to settle parental IEP challenges where parents have submitted due process complaints in the form of a letter stating the basis for parents' objections to the IEP and requesting a hearing, as not based on substantial evidence, and as arbitrary, capricious, and affected by an error of law; i. [s]etting aside Respondents' administrative determination that [petitioner] has no authority to settle parental IEP challenges unless [petitioner] concedes that the CSE failed to provide an appropriate IEP as arbitrary, capricious, and affected by an error of law; j. [a]nulling Respondents' order that [petitioner] cease and desist its IEP dispute resolution practices as set forth herein; k. [a]nulling Respondents' order that [petitioner] review the IEPs of all students placed in a public or private out-of-district program for the primary purpose of providing the students with Yiddish programs and submit a plan and timeline for developing in-district programs to meet the needs of such students; l. [e]njoining Respondents from ordering Petitioner to alter its procedures or sanctioning petitioner on the basis of Respondents' erroneous findings of fact and legal

conclusions as set forth in its legal determinations of December 19, 2012."

Petitioner also seeks costs associated with bringing this petition.

CPLR § 7803 states that the court review of a determination of an agency, such as respondent New York State Education Department of the University of New York, consists of whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion (CPLR § 7803[3]). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and * * * without regard to the facts" (Matter of Pell v Board of Education, 34 NY2d 222, 231 [1974]). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion (Matter of Pell v Board of Education, 34 NY2d 222, 231 [1974]). The Court's function is completed on finding that a rational basis supports the respondents' determination (see, Howard v Wyman, 28 NY2d 434 [1971]). Additionally, an agency's reasonable interpretation of the statutes and regulations it administers is entitled to substantial deference (Matter of Salvati v Eimicke, 72 NY2d 784, 791 [1988]), reargument denied 73 NY2d 995 [1989]). Where the agency's interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (see, Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363 [1987]; Matter of J-P Group, LLC v New York State Dept. of Economic Dev., 91 AD3d 1363, 1364 [4th Dept. 2012]; Awl Industries, Inc. v Triborough Bridge and Tunnel Authority, 41 AD3d 141, 142 [1st Dept. 2007]; Matter of Walker v State Univ. of N.Y. [Upstate Med. Univ.], 19 AD3d 1058, 1059 [4th Dept. 2005]).

Petitioner has wholly failed to meet its burden of demonstrating that respondents acted arbitrarily or capriciously or contrary to law. In the case at bar, the respondents' determination was based on several on-site monitoring reviews of petitioner's special education placements. The IDEA permits parents to file a complaint challenging the CSE's placement recommendation (20 USC § 1415(b)(6)) and indeed requires that the complaining parent and the school district attend a "resolution meeting" following such a complaint (20 USC § 1415(f)(1)(B)). However, it is not irrational for respondents to require that they be held properly. A due process complaint (20 USC § 1415(b)(6)(7)), not a mere letter, must be filed. In addition to including a representative of the district with decision-making authority, the participants must include the parents and members of the CSE who have information and knowledge of the case and child (20 USC § 1415(f)(1)(B)). Conducting 12 resolution meetings in a single day indeed "suggest[s] individual consideration had not been given and the meetings were pro forma exercises to change CSE placement recommendation to the parent's preference." Respondents' directive to petitioner to "use the dispute resolution processes established in federal and [s]tate law and regulation" and to cease "allow[ing] one District representative to unilaterally determine the placement for students with disabilities and override CSE LRE placement recommendations" does not inhibit petitioner's ability to settle disputes, but rather inhibits only the practice of approving unnecessarily restrictive placements by permitting one district representative to circumvent or overturn CSE decisions at resolution meetings which is inconsistent with federal and state law and regulations and the objectives of the IDEA.

Administrative agencies are entitled to broad discretion in rendering determinations on matters they are entitled to decide, and the agencies' interpretation of their own regulations and the statutes under which they function are entitled to great weight. This Court holds and determines that respondents' determination based upon the foregoing factors was reasonable and rational, not in violation of lawful procedure, and was not arbitrary, capricious or an abuse of discretion, or affected by an error of law (see, Matter of Shurgin v Ambach, 56 NY2d 700 [1982]; Matter of Pell v Board of Education, 34 NY2d 222, 231 [1974]).

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

This constitutes the Decision and Order of the Court. This Decision and Order is returned to the Attorney General. All other papers are delivered to the Supreme Court Clerk for transmission to the County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry. Memorandum constitutes the Decision and Order of the Court.

SO ORDERED.
ENTER.

Dated: Troy, New York
December 30, 2013

MICHAEL H. MELKONIAN
Acting Supreme Court Justice