
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 21
In the Matter of East Ramapo
Central School District,
Appellant,
v.
John B. King, Jr., &c., et al.,
Respondents.

Randall M. Levine, for appellant.
Jeffrey W. Lang, for respondents.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs.

The issue on appeal is whether the East Ramapo Central
School District (the District) may obtain CPLR article 78 review

of a determination by the New York State Education Department (the State) that the District's dispute resolution practices for placing students with disabilities violated a federal statute -- the Individuals with Disabilities Education Act (the IDEA [20 USC § 1400 et seq.]) -- and related state law, and which directed the District to revise its practices accordingly. The Appellate Division dismissed the District's article 78 petition on the basis that there was no private right of action in the IDEA that would permit the District to bring a claim of this nature (130 AD3d 19, 20 [3d Dept 2015]). We affirm but on different grounds.

In 2012, the State found that the District's dispute resolution practices violated federal and state law and directed the District to take corrective action. Although the State informed the District that failure to comply could result in further enforcement actions, including withholding federal funds, the State did not make a final decision to withhold funds.

A proceeding under CPLR article 78 "shall not be used to challenge a determination which is not final or can be adequately reviewed by appeal to a court or to some other body or officer" (CPLR 7801 [1]). Likewise, this Court has recognized that "[t]o challenge an administrative determination, the agency action must be final and binding upon the petitioner" (Matter of Ranco Sand & Stone Corp. v Vecchio, 27 NY3d 92, 98 [2016] [internal quotation marks and citations omitted]). In addition, in the absence of injury, there is no standing to bring an

article 78 proceeding (see Matter of Dairylea Coop. v Walkley, 38 NY2d 6, 11 [1975]).

Assuming, without deciding, that a school district may bring an article 78 proceeding to challenge a final determination by the State under the IDEA, here, the State has not made a final determination, the District has not shown that it has exhausted its administrative remedies, and the District is unable to articulate any actual, concrete injury that it has suffered at this juncture. Accordingly, the District's petition was properly dismissed.

* * * * *

Order affirmed, with costs, in a memorandum. Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein, Fahey, Garcia and Wilson concur.

Decided March 28, 2017