

Center for Discovery, Inc. v NYC Dept. of Educ.

2017 NY Slip Op 32848(U)

August 1, 2017

Supreme Court, New York County

Docket Number: 160157/2016

Judge: Erika M. Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Erika M. Edwards, J.S.C. Justice

PART 47

Index Number : 160157/2016
CENTER FOR DISCOVERY, INC.
vs.
NYC DEPARTMENT OF EDUCATION
SEQUENCE NUMBER : 001
ARTICLE 78/ANNULMENT OF DETERMINATION

INDEX NO. 160157/2016
MOTION DATE 06/01/2017
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for Article 78 Proceeding
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 001
Answering Affidavits — Exhibits No(s) 002
Replying Affidavits No(s) 003

Upon the foregoing papers, it is ordered that

The court DENIES Petitioner The Center for Discovery, Inc.'s ("CFD") petition seeking an order annulling the determination of New York City Department of Education ("DOE") not to reimburse CFD for all of the services it is providing to child D.P. pursuant to the child's Individual Education Plan ("IEP"). DOE's cross-motion to dismiss the petition is GRANTED.

CFD argues that an email from DOE's counsel explaining that DOE was not authorized to fully reimburse CFD for services rendered to D.P. constituted an arbitrary and capricious determination by DOE that was a violation of lawful procedure. DOE cross-moves to dismiss the petition and primarily argues that the instant proceeding is improper since the email does not constitute a final determination by DOE for which judicial review is authorized.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (see CPLR § 7803[3]; Matter of Pell v Board of Educ., 34 NY2d 222, 230 [1974]; Scherbyn v BOCES, 77 N.Y.2d 753, 757-758 [1991]). A proceeding under CPLR 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]). Also, to challenge an administrative determination, the agency action must be final and binding upon the petitioner (Walton v. New York State Dept. of Correctional Servs., 8 N.Y.3d 186, 194 [2007]). A determination subject to review under Article 78 exists when, first, the agency "reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be significantly ameliorated by further administrative action or by steps available to the complaining party" (id.).

Here, the email CFD received from DOE's counsel does not constitute a final determination by DOE not to reimburse CFD. In fact, the email specifically directs CFD to address funding issues with New York State Education Department (NYSED). Furthermore, CFD has not demonstrated that it has exhausted its administrative remedies including addressing the matter with NYSED and/or New York State Office for People with Developmental Disabilities (OPWDD).

As such, it is hereby

ADJUDGED that the petition is denied and New York City Department of Education's cross-motion to dismiss the petition is granted. The proceeding is dismissed without costs.

Dated: 8/1/2017

HON ERIKA EDWARDS, J.S.C.

- 1. CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [] GRANTED [X] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

MOTION/CASE IS RESPEC/FULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):