



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

STATE OF SOUTH CAROLINA,

Docket No. 13-43-O
Individuals with Disabilities
Education Act (IDEA)

Respondent.

DECISION ON INTERLOCUTORY REVIEW

Counsel for the Office of Special Education and Rehabilitative Services (OSERS) has requested interlocutory review of the April 30, 2015, order issued by Administrative Law Judge (ALJ) Angela J. Miranda (Hearing Officer) in the above-captioned appeal. I granted the request for review by order dated May 29, 2015. The question presented is whether OSERS' amended proposed determination can be excluded from consideration in this proceeding, and therefore, whether I should affirm the Hearing Officer's April 30, 2015, order. Based on the following analysis, I answer the question in the affirmative.

I. Background

The background of this matter was described in the previous order as follows:

At issue is a Notice of Proposed Determination dated June 17, 2013, issued to the South Carolina Department of Education (SCDE). In December 2014, in her role as Hearing Officer, Administrative Law Judge (ALJ) Angela J. Miranda commenced hearing proceedings under 34 C.F.R. § 300.181. At that time, counsel for OSERS asserts that OSERS was considering withdrawing and reissuing the proposed determination based on data proffered by South Carolina after the proposed determination had been issued. The Hearing Officer set a January 15, 2015, deadline for OSERS to file a motion to dismiss or other appropriate motion based on "the reported revelation of the referenced State audit." OSERS asserts it misunderstood the import of this deadline, made no filing, and then purported to issue an amended proposed determination on February 18, 2015. The Hearing Officer precluded OSERS from adding the amended proposed determination to the proceeding and subsequently denied a request for a retroactive extension of time to construe the amended proposed determination as a timely filed motion. OSERS has requested interlocutory review of a question raised by the April 30, 2015, order denying the extension of time.

Order dated May 29, 2015 at 1 (footnotes omitted).

Before the Department determines that a State is ineligible to receive funding under the Individuals with Disabilities Education Act (IDEA), the Department must provide notice and an opportunity for a hearing.¹ Among other things, the written notice must state the basis on which the Department proposes to make a final determination.²

Once the State requests a hearing on the proposed disapproval, a hearing officer is assigned. The hearing officer is empowered to regulate the course of proceedings, including taking “all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.”³ Among the specific authority granted to the hearing officer is the authority to “rule on motions and other issues at any stage of the proceedings.”⁴

In this case, OSERS purported to file an amended proposed decision. The Hearing Officer treated this filing as an untimely motion in response to her February order. OSERS then requested a retroactive extension to make timely the filing of the amended proposed determination. The Hearing Officer denied the extension request. Now, OSERS asks me to overturn the Hearing Officer’s rulings so that the amended proposed determination will become part of the record and form the new basis for the hearing.

II. Analysis

The first issue to resolve on interlocutory review is whether the Hearing Officer erred by prohibiting OSERS from amending the proposed determination while it is on appeal. OSERS argues, among other things, that it can make such an amendment in the interest of efficiency.⁵ SCDE takes two contrary positions on the question. On the one hand, it argues that I should affirm the Hearing Officer’s order because the amended proposed determination is a new decision and SCDE has a right to new notice, a right to file a new waiver request, and a right to a new hearing if it requests one.⁶ On the other hand, SCDE argues I should affirm the Hearing Officer’s order because the scheduling order set a deadline within the Hearing Officer’s authority and OSERS missed that deadline.⁷ SCDE’s second position begs the question, because the timeliness of the filing cannot be relevant if SCDE’s first position—that the amended proposed determination makes the entire hearing on the existing decision moot—is correct.

My decision in this case is limited to the Hearing Officer’s exclusion of the amended proposed decision solely on the basis of its late filing and noncompliance with a scheduling order.⁸ That is, to resolve this case I need not consider whether OSERS could *ever* amend a proposed determination during the pendency of a hearing. The Hearing Officer pointed out that the protracted history of the case weighed against allowing such an amendment in the middle of

¹ 34 C.F.R. § 300.179.

² *Id.* § 300.179(b)(1).

³ *Id.* § 300.181(c).

⁴ *Id.* § 300.181(h).

⁵ OSERS Brief, p. 18.

⁶ SCDE Brief, p. 10.

⁷ *Id.*, pp. 6–9.

⁸ *See generally* Hearing Officer’s Order dated April 30, 2015.

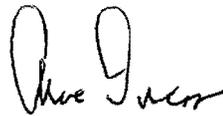
the proceedings.⁹ These findings, coupled with SCDE's clear opposition to such an amendment, are sufficient to justify the Hearing Officer's refusal to allow OSERS to continue the current hearing process with an amended proposed decision. Protection of a respondent's right to due process, including proper notice of a decision before the commencement of administrative proceedings, is the paramount concern. The Hearing Officer's refusal to admit the amended proposed decision and her subsequent denial of an extension request both fall within her extensive authority to manage these proceedings.¹⁰

This does not end my inquiry. The second issue to resolve is what consequences arise from the Hearing Officer's exclusion of the amended proposed determination from the ongoing hearing. OSERS has clearly stated that the amount at issue in the proposed decision is incorrect.¹¹ SCDE argues that OSERS should withdraw its decision, terminating the hearing, and issue a new decision to begin the process anew.¹² OSERS also asserts it is amenable to withdrawing its decision and reissuing it if I support that procedural process.¹³ I find that, because OSERS no longer supports its own decision based on new evidence, an appropriate resolution is for OSERS to voluntarily withdraw it, issue a new decision, and then allow the respondent to challenge the decision in normal course. OSERS' filing a motion to withdraw before the Hearing Officer in these circumstances would be germane at any time during the hearing proceedings, because the fact that the deciding officer no longer supports the decision conclusively extinguishes the basis for the hearing.

I note that the Hearing Officer characterized OSERS' filing of an amended proposed decision instead of a withdrawal of its proposed decision as a convenient attempt to avoid "the possibility that a Motion to Withdraw could have resulted in a dismissal with prejudice."¹⁴ The import of a dismissal "with prejudice" is unclear in this case, as a hearing officer is not vested with authority to prohibit OSERS from carrying out future programmatic decision making, including issuing a new proposed decision based on new evidence. Therefore, OSERS faced no danger of prejudice by voluntarily withdrawing its decision to facilitate issuing a new one.

Accordingly, the Hearing Officer's April 30, 2015, order is affirmed.

So ordered this 28th day of August 2015.



Arne Duncan

Washington, D.C.

⁹ *Id.*, p. 9.

¹⁰ See 34 C.F.R. §§ 300.181(c)-(q).

¹¹ OSERS Brief, p. 3.

¹² SCDE Brief, pp. 10-11.

¹³ OSERS Brief, pp. 17-18.

¹⁴ Hearing Officer's Order dated April 30, 2015, at 8.

Service List

Angela J. Miranda
Administrative Law Judge
Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4616

Leigh M. Manasevit, Esq.
Tiffany R. Winters, Esq.
Brustein & Manasevit
3105 South Street, NW
Washington, D.C. 20007

Timothy Middleton, Esq.
Nana Little, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-2110