

Local Hearing _____

State Level Appeal _____

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the special education hearing and submitted to the Department of Education before billing.)



Public Schools

School Division _____

Name of Parents _____

Name of Child _____

Date of Decision _____

, Esquire

Counsel Representing LEA _____

Counsel Representing Parent/Child _____

Parent

Party Initiating Hearing _____

Public Schools

Prevailing Party _____

Hearing Officer's Determination of Issue(s):

Parents contest the timeliness and appropriateness of Parents notification of the Individual Educational Plan meeting held on

Hearing Officer's Orders and Outcome of Hearing:

is to convene an IEP meeting as soon as possible on a date convenient to

is to present a written list of potential dates and locations to from which is ordered to select one or to propose an alternative date or an alternative location. When the date and location have been agreed upon, the IEP meeting is to be held with either or both parents present and the normal procedures followed.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

Printed Name of Hearing Officer _____

Signature _____

VIRGINIA:

DEPARTMENT OF EDUCATION
DUE PROCESS HEARING

Complainants,)
)
)
)
vs.) In Re:
)
) ' PUBLIC SCHOOLS,)
)
Respondent.)

DECISION

Issues

This action arose as a request for a Due Process Hearing by , the parent of (hereafter). 's father, , with the approval of mother, , contests the timeliness and appropriateness of notification of the Individual Educational Plan (hereafter IEP) meeting held on .

The Public Schools (hereafter) contend that appropriate notice was given that was uncooperative in picking a date and furthermore that they stand willing to reconvene the IEP meeting at any time at convenience as required by the Individuals with Disabilities Education Act, 20 USC § 1400 et seq. (hereafter IDEA).

Findings of Fact

1. is a year old .
2. Both parties stipulated that is eligible for special education services.
3. is presently attending School in as a unilateral placement by parents.
4. is using the due process mechanism "to try to bring Public Schools in compliance with the law and Virginia regulations." (TR 12, Lines 18-19)
5. The relief is seeking is to have determined to be in violation of IDEA and the state regulations, and to have this IEP document that was prepared in absence basically to be acknowledged to be deficient because was not given a reasonable opportunity to participate in its drafting or development. (TR 13, Lines 12-19)

6. _____ is the contract services specialist involved with the _____ IEP.
(TR 20)
7. _____ dislikes and distrusts _____ and does not want _____ to be involved with child's education. (TR 59, 12-15; TR 75, 16-17; TR 241, 17-19) (_____ Exhibit 6)
8. On _____, a written notification was given to _____ which was resent on the _____ and _____ outlining various dates available for an IEP meeting and requesting selection of one of these. (_____ Exhibit 3)
9. On _____, a notification was sent to _____ (_____ Exhibit 4) selecting _____ as the last possible date available as a timely date to make sure that the IEP was in effect by the beginning of the school year (_____).
10. _____ did not respond to the _____ et seq. letters (_____, Exhibit 3) (TR 129-130, 17-24; TR 137)
11. An IEP meeting was convened on _____, but was dismissed without action because no parent was present. (TR 132-134)
12. _____ typically provides the parents with a list of proposed dates for IEP meetings. When a mutually agreeable date is selected formal rule compliant notice is sent. (TR 180-182)
13. _____ accused _____ of writing mail for _____ which _____ did not do (TR 197-198). _____ misconception was caused by the transfer of a logo.
14. _____ considered the notification of the _____ IEP meeting to be a unilateral ultimatum (TR 206-209).
15. _____ was not given written notice of the _____ meeting. (TR 216)
16. _____ wants all parent communications to be logged (TR 218) and _____ to be in writing.
17. _____ confuses selection of dates (TR 235) with the notification process.
18. _____ made no counter proposal for an IEP date from _____ to the hearing (TR 245).
19. _____ is ready to have an IEP meeting. (TR 262)
20. _____'s parents have had _____ placed in a private school, _____ School, but did not apply for approval of the placement or reimbursement of the cost.

Conclusion

attempted to negotiate dates to set up an IEP meeting. was not responsive to this action. was forced by the requirement to have an IEP in place at the beginning of the school year to conduct an IEP meeting without the parents. efforts constitute reasonable effort to engage the parents and to secure their part in the IEP meeting.

Conclusions of Law

1. Notice of an IEP meeting must contain (1) date, (2) time, (3) location of who will attend so that parents of children with disabilities have the opportunity to participate in meetings with respect to the identification, evidence, and educational placement of the child, and the provision of FAPE to the child. (TR 100, 20) Meetings shall be scheduled at mutually agreeable times. Notice of a meeting must include the purpose, date, time and location of the meeting, as well as a list of those who plan to attend. (TR 113, 7-10)

2. 34 CFR 300.342(a). An IEP is required for the beginning of the school year.

3. District is obligated to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. 34 C.F.R. § 300.345(a). An IEP meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. 34 C.F.R. § 300.345(d).

4. There is no procedural violation where a school makes a reasonable attempt to obtain parental participation at the IEP meeting but the parents have no intention of attending. Wickenburg Unified School District, 38 IDELR 148 (Ariz. SEA 2002).

5. The school district must make good faith effort to reach an agreement with the parents concerning the scheduling of IEP meetings. Letter to Anonymous, 18 IDELR 1303 (OSEP 1992).

6. A hearing officer does not have power to issue declaratory judgment under IDEA. Newark Unified School District, 32 IDELR 217 (Ca. SEA 2000)

7. Rule 57 of the Rules of Civil Procedure states "the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." "The 'controversy' must necessarily be 'of a justiciable nature, thus excluding an advisory decree upon a hypothetical state of facts.' Ashwander v. Tennessee Valley Authority, 1936, 56 S. Ct. 466, 473, 297 U.S. 288, 80 L.Ed. 688. The existence of non-existence of any right, duty, power, liability, privilege, disability, or immunity or of any fact upon which such legal relations depend, or

of a status, may be declared. The petitioner must have a practical interest in the declaration sought.”

Discussion

The instant matter appears to be more a case of pique and disillusionment on the part of the parents. Manifestly, they do not like the system or the people involved in it and most particularly the contract specialist assigned to their case. However, the relief requested does not in any way confer a benefit upon the child in question, although clearly it is always a benefit to the child to have parental participation in the child's education. All it does is say that the school system is wrong in its administration and its processes. The child's education is not affected one way or another. In this sense it is clearly a request for a declaratory judgment and as such appears to be impossible for the hearing officer to render. That being said, there clearly are some simple solutions to the quandary in which both parties to this essentially frivolous use of the due process mechanism are involved. It appears logical that without finding any fault should assign another contract specialist, not deal with the Since clearly does not grasp the difference between an informal presentation of options or potential dates for mutual convenience for holding of relevant and specific IEP meetings and the formal notification with all the specific elements included, it would appear logical for to present its proposed meeting dates in writing and then send the formal notification of the actual meeting replete with the specified elements of who, where, when and why adequately delineated.

Wherefore, the following is ordered:

Order

1. is to convene an IEP meeting as soon as possible on a date convenient to
2. is to present a written list of potential dates and locations to from which is ordered to select one or to propose an alternative date or an alternative location. When the date and location have been agreed upon, the IEP meeting is to be held with either or both parents present and the normal procedures followed. While this hearing officer does not believe it is appropriate to intervene in personnel decisions in the school system, it is strongly recommended that a new contract specialist be designated for dealing with the This is not to be construed as an adverse comment on the present incumbent but merely a realization of the impossibility of resolution of the personal conflict inherent in the relationship.

Notice

This decision is final and binding unless appealed by a party in a State Circuit Court within one year of this decision's issuance date, or in a Federal Court.

Date

, Hearing Officer

copies to:

Department of Special Services
Monitoring & Compliance

, VA

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