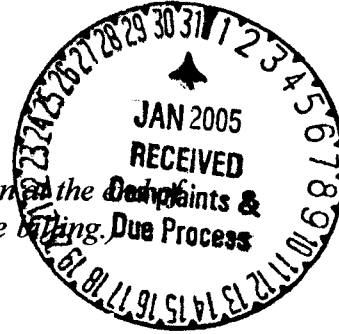


CASE CLOSURE SUMMARY REPORT

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



Public Schools

School Division

Name of Parents

January 14, 2005

Name of Child

Date of Decision or Dismissal

Derek A. Mungo

None

Counsel Representing LEA

Counsel Representing Parent/Child

Parents

None

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

At a pre-hearing conference with the parents and the LEA on January 6, 2005, the Hearing Officer questioned the parents about their due process hearing request. Although parents are dissatisfied with their son's progress, the factual events of this case do not present an actual case or controversy. There has been no refusal of action for requested special education services by the LEA.
Hearing Officer's Orders and Outcome of Hearing:

This due process hearing request was dismissed without prejudice to the parents.

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.

Sarah S. Freeman

Printed Name of Hearing Officer

Signature

Sarah Smith Freeman

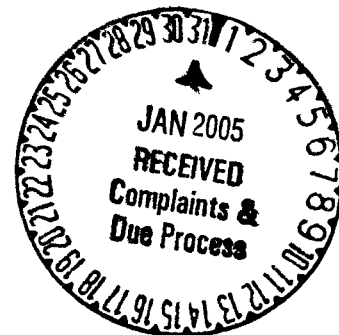
Attorney at Law

210 East Road

Portsmouth, Virginia 23707

Telephone (757) 399-8105 Facsimile (757) 399-2004

January 14, 2005



VIA FACSIMILE AND BY REGULAR U.S. MAIL

Derek A. Mungo, Esquire
Assistant City Attorney
Department of Law
810 Union Street, 900 City Hall Building
Norfolk, Virginia 23510

RE: Due Process Hearing v.

Schools

Dear , & Mr. Mungo:

Pursuant to a due process request filed by the parents in the above matter, a pre-hearing conference occurred on January 6, 2005. In the presence of school counsel and school representative, this Hearing Officer questioned the parents regarding the specifics of their complaint. This Hearing Officer granted the school district's motion for dismissal of this due process request after the following facts emerged from our discussion at the pre-hearing conference:

1. is a nine (9) year old boy who is in third grade at School in Virginia. has been eligible to receive special education services since his kindergarten year in the Public Schools. was originally identified as "developmentally delayed," however, he currently receives special education services as "other health impaired."
2. Mr. speaks English fluently and his language skills may best be described as "bi-lingual." Although Mrs. speaks Spanish almost exclusively, she is quite capable of communicating her thoughts through an interpreter. In a one-to-one setting, Mrs. is able to "pick up" some English in conversation but, for the most part, she requires the assistance of an interpreter to communicate in English.
3. School counsel arranged for an impartial interpreter, to communicate for Mrs. at the pre-hearing conference on January 6, 2005.
4. Mrs. asserted that both parents are generally dissatisfied with the course of 's special education.

5. Mrs. [redacted] filed the immediate request for due process after an incident occurred in school on November 29, 2004. The school had sent home a note advising [redacted]'s parents that their son had received a "pitstop" or "time-out" at school.

6. The school representative related that [redacted]'s IEP placement was recently revised at his last IEP meeting to permit [redacted] to be educated in a less restrictive placement at his home school, [redacted]. In fact, [redacted]'s current IEP decreases the number of minutes (450 minutes to 300 minutes) during which [redacted] will require special education services. At school, [redacted] is "well-behaved" and quite "manageable," the school representative related.

7. At home, Mrs. [redacted] described a different child: experiences "flashbacks" of prior incidents that occurred with his current teachers and classmates at this school. According to his mother, "[redacted] fears school."

8. Mr. [redacted] did not appear to object to the "pitstop" or "time-out" disciplinary measure imposed upon [redacted] to punish [redacted] for a minor foodthrowing incident. Mrs. [redacted] does not appear to take issue with the above incident, however, she does believe that [redacted]'s disability may preclude imposition of discipline at school.

9. On October 22, 2004, the IEP committee revised [redacted]'s placement: His placement was changed from the more restrictive "Willard" model (self-contained) to the less restrictive home school model (inclusion). [redacted]'s IEP contains an FBA and a BIP. The school representative indicated that these documents were reviewed and deemed sufficient at the above last meeting of the IEP committee.

10. Mrs. [redacted] informed the Hearing Officer that she has conferred on many occasions with the U. S. Federal Government, Office of Civil Rights. Mrs. [redacted] has been informed of federal rules and entitlements. Mrs. [redacted] indicated that she has provided copies of Section 504 regulations to her son's IEP team and teachers.

11. School counsel asserted that [redacted]'s special education needs are currently being met by his IDEA plan. The parents do not claim that this school system has violated a federal regulation.

12. Notwithstanding the above, the parents requested a Hearing Officer ruling upon the following issues:

(1) Private placement at another school where there are less children ([redacted]'s current classroom has 18 children);

- (2) An independent educational evaluation at public expense;
- (3) Compensatory damages for 's mistreatment during kindergarten at Elementary School;
- (4) Reimbursement for college or university tuition for by this school system;
- (5) A determination that is not making adequate progress in school.

13. School counsel moved to dismiss the pending request for due process hearing upon the following grounds:

a. Issues above numbered "(1)", "(2)", & "(5)" are not appropriate matters for determination by this Hearing Officer because the school district has not refused to act upon any parental request for provision of special education services to . The school district contends that the parents have not raised an actual case or controversy for determination by a special education Hearing Officer.

Although parents expressed concerns regarding 's special education needs, the school district asserts, the parents have recently attended IEP discussions, participated in the creation of a revised IEP, and signed off on a recent IEP in which 's placement was changed. The parents have never before advised the school district of the parents' discontent with the contents of the IEP or of the need for additional educational evaluation of their son.

The parents do not seek to change 's identification as "other health impaired" and the parents have not produced any contradictory psychological or educational evaluations to the school district. The parents describe 's behaviors to be akin to "ADHD" and there has been no school report to the contrary.

b. Issue above numbered "(3)" presents an underlying tort claim. A Virginia Hearing Officer appointed to decide special education matters lacks jurisdiction and authority to address a Virginia resident's tort claim in an IDEA due process proceeding.

c. Issue above numbered "(4)" presents an impermissible request for compensatory relief. A Virginia Hearing Officer appointed to decide special education matters lacks jurisdiction and authority to address a request by the parents of a Virginia special education student for college and/or university tuition in an IDEA due process proceeding.

d. The parents' request for relief connected to events occurring during 's kindergarten years is barred by the Virginia two (2) year statute of limitations applicable to IDEA claims.

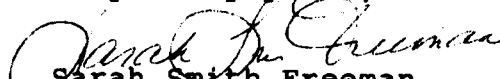
14. School counsel and school representative agreed to hold another meeting of the IEP committee to review the status of _____'s IEP, his FBA and BIP within two (2) weeks.

15. Parents prefer that the details of this special education due process hearing request be reviewed by the State of Virginia, Department of Education, Due Process & Complaints Division, for errors in this due process hearing request action.

16. Parents requested that the Regulations Governing Special Education Programs for Children with Disabilities in Virginia Handbook be translated into Spanish.

This Hearing Officer agrees that the appropriate grounds exist to justify dismissal of the present request, therefore, this due process hearing request is hereby DISMISSED without prejudice. Dismissal of the present due process hearing request brought by the parents serves the best interests of _____ in this special education proceeding.

Very truly yours,


Sarah Smith Freeman
Hearing Officer

SSF/ses

cc: Dr. Judith A. Douglas, Director/Patrick T. Andriano,
Esquire, Due Process Specialist, Due
Process & Complaints, VDOE

Dr. Denise K. Schnitzer, Interim Superintendent,
Dr. _____, Senior Director of Special and
Gifted Services,

Ms. _____ Assistant Director of
Special and Gifted Education Services,

