

COMMONWEALTH OF VIRGINIA  
Special Education

Re: \_\_\_\_\_, by and through his next friend and

parent,  
v.

Public Schools

DECISION OF THE HEARING OFFICER  
CONCERNING THE LEA'S NOTICE OF INSUFFICIENCY AND  
MOTION TO DISMISS

---

**Child & Parents:**

**Administrative Hearing Officer:**

John V. Robinson, Esquire  
7102 Three Chopt Road  
Richmond, Virginia 23226  
(804) 282-2987  
(804) 282-2989 (facsimile)

**Child's Attorney or Advocate:**

None at this time

**LEA's Attorney:**

Yvonne S. Wellford, Esquire  
Bradford A. King, Esquire

---

**BACKGROUND:**

On April 16, 2009, the LEA received the parent's Request for Due Process Hearing (the "Request"). The hearing officer was appointed to this administrative due process proceeding on April 20, 2009. To date, efforts between the parties to resolve their differences have proved unsuccessful. Of course, the hearing officer continues to encourage the parties to attempt to reach a mutually acceptable resolution of their differences, either through formal mediation or less formal settlement discussions. On Monday, April 27, 2009, the parties held a first pre-hearing conference call to schedule the hearing. Ms. \_\_\_\_\_, Ms. Wellford, Mr. King, Ms. \_\_\_\_\_, Mr. Miller (the SEA's independent evaluator assigned to this proceeding) and the hearing officer participated in the call and the hearing was duly scheduled for May 28 and May 29, 2009. Ms. Johnson of Chandler & Halasz transcribed the pre-hearing conference call. A second pre-hearing conference call was scheduled for 1:30 p.m. on May 8, 2009. That call will no longer be necessary for the reasons given below.

On April 28, 2009, the LEA, by counsel, timely notified the hearing officer and parent in writing that the LEA believed that the Request has not met the requirements for a due process complaint notice pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (the "2004 Act"). 20 U.S.C. § 1415(b)(7)(A) and § 1415(c)(2)(C). Additionally, the LEA has

moved to dismiss the parent's claims because the claims do not allege any disagreement with the School Board over any of the items which can serve as the basis for a due process hearing request. See e.g., 8 VAC 20-80-76 (B)(1); 34 CFR §§300.507(a) and 300.503(a)(1) and (2); and LEA's Challenge to the Sufficiency of the Due Process Notice (the "Motion to Dismiss").

LEA's Motion to Dismiss. The hearing officer hereby decides that the parent's Request is legally insufficient on its face because it does not meet the requirements of 20 U.S.C. § 1415(b)(7)(A). The Request fails to sufficiently describe the nature of the problem, the facts relating to the problem and a proposed resolution, as contemplated by applicable law. 20 U.S.C. § 1415(b)(7)(A)(ii). In short, the parent's claims on the face of the Request are too nebulous and vague for the School Board or the hearing officer to understand.

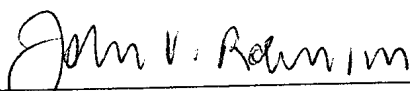
The LEA also maintained certain other jurisdictional challenges in its Motion to Dismiss. In view of the hearing officer's decision concerning the insufficiency of the parent's due process complaint notice, these challenges are moot and are not considered by the hearing officer.

Dismissal Without Prejudice. The parent at one stage of these proceedings at least, was trying to find an attorney or advocate to represent her. The hearing officer does have the discretion to allow the parent to amend her Request. 20 U.S.C. § 1415(c)(2)(E)(i)(II). However, if the hearing officer were to grant such leave to amend, the hearing officer would establish a time period of 10-15 days within which the parent would need to amend her due process complaint notice. Such a deadline hanging over the parent's right to amend may well hamper her efforts to find competent representation of her choice. Accordingly, the hearing officer hereby decides to dismiss this administrative due process proceeding without any prejudice to the parent's rights to reinstitute her due process proceeding at a time when she has had an opportunity to secure legal representation and to reformulate her Request in a more clear and legally sufficient format.

Obviously, because of my dismissal of this proceeding without prejudice, the parties' pre-hearing conference call scheduled for 1:30 p.m., May 28, 2009, the hearing, etc. are no longer in effect.

Right of Appeal. This decision is final and binding unless either party appeals in a federal District court within 90 calendar days of the date of this decision, or in a state circuit court within one year of the date of this decision.

ENTER: 5 / 4 / 09

  
\_\_\_\_\_  
John V. Robinson, Hearing Officer

cc: Persons on the Attached Distribution List (by U.S. Mail, e-mail and via facsimile, where possible)

**Distribution List  
for  
Due Process Hearing  
regarding**

---

Ms.

(804) \_\_\_\_\_ (telephone)  
E-mail: \_\_\_\_\_@aol.com

Ms.

Director of Special Education  
Public Schools

(804) \_\_\_\_\_ (telephone)  
E-mail: \_\_\_\_\_@ps.us

Yvonne S. Wellford, Esquire  
Senior Assistant County Attorney  
Hanover County Attorney's Office  
Post Office Box 470  
Hanover, VA 23069  
(804) 365-6044 (telephone)  
(804) 365-6302 (facsimile)  
E-mail: [yswellford@co.hanover.va.us](mailto:yswellford@co.hanover.va.us)

Bradford A. King, Esquire  
Harrell and Chambliss, LLP  
707 East Main Street  
Suite 1000  
Richmond, VA 23219  
(804) 643-8401, ext. 225 (telephone)  
(804) 648-2707 (facsimile)  
E-mail: [bking@hclawfirm.com](mailto:bking@hclawfirm.com)

Ron Geiersbach, Esquire  
Coordinator, Due Process and Complaints  
Virginia Department of Education  
Post Office Box 2120; 20<sup>th</sup> Floor  
Richmond, VA 23218-2120  
(804) 225-2234 (telephone)  
(804) 786-8520 (facsimile)

Evaluator

Brian K. Miller, Esquire  
2119 West Main Street  
Richmond, VA 23220  
(804) 359-4902 (telephone)  
(804) 353-8218 (facsimile)  
E-mail: [MillerLawLimited@aol.com](mailto:MillerLawLimited@aol.com)