

OCT 07 2011

VIRGINIA DEPARTMENT OF EDUCATION

Dispute Resolution &
Administrative Services

CASE CLOSURE SUMMARY REPORT

Public Schools
School

Parent

Kathleen S. Mehfoud, Esquire/ Patrick T. Andriano
Counsel for School Division

Parent

None

Special Education Director

Counsel for Parent/Child

September 27, 2011

No decision/Dismissed in entirety
without prejudice
Prevailing Party

Dismissal Order

Parent

Party Initiating Hearing

Hearing Summary

Hearing Officer Determination of Issue:
Was the child entitled to special education services?

Hearing Officer Orders and Hearing Outcome:
There were no final hearing officer orders. Parent did not re-file an amended due process complaint. Parent did not return subpoenaed documents to counsel. This hearing officer dismissed the case for non-compliance with orders.

This certifies that I have completed this hearing in accordance with the regulations and have advised the parties in writing of their appeal rights.

Date: September 27, 2011

// Sarah S. Freeman, Hearing Officer

Sarah S. Freeman
Hearing Officer

VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

IN RE:

HEARING OFFICER RULING ON INSUFFICIENCY & ORDER

RECOMMENCING THE IDEA TIMELINE

THIS DAY came _____ Public Schools, the Local Educational Agency, (“the LEA” or “ PS”), by counsel, on a Notice of Insufficiency motion, (“Motion”) the LEA having challenged the legal sufficiency of a due process request made by _____, (“Parent”) on behalf of her son, _____, (“the Child”); the LEA moves for dismissal of the Parent’s due process request under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400 *et seq.*

Parent alleges generally in her due process complaint that the LEA has not complied with the IDEA in the Child’s identification as a special education student at PS. The LEA responds to Parent’s complaint by moving for its dismissal on the ground that it is insufficient as a matter of law under 20 U.S.C. 1415 (b)(7)(A)(ii), 20 U.S.C. 1415 (b)(7)(B) and 20 U.S.C. 1415 (c)(2)(B). The LEA asserts its ground for dismissal that the complaint does not contain an adequate description of the problem, lacks sufficient facts relating to the problem, and does not contain a proposed resolution of the problem.

And it appearing that this written ruling is timely and is in conformity with 8 VAC 20-81-210(F)(5) and the IDEA, this Hearing Officer has considered the LEA’s Motion and responds:

Parent may amend and re-file the due process request within seven (7) business days from her receipt of this Order as follows:

1. The LEA asserts that the Parent has failed to provide a legally sufficient description of the problem with supporting facts. Parent used the psychiatric categorization term, “Multi Axis

I diagnosis” in Paragraph numbered “7.” of the due process complaint to describe the nature of the Child’s problem. On this ground, the LEA argues that the Parent has not provided a sufficient subject matter basis in support of an IDEA due process hearing. Parent is not required to amend her complaint merely because she used psychiatric language to define the Child’s educational issues.

This Hearing Officer **DENIES** the LEA’s request for dismissal of Parent’s complaint on the ground contained in in Paragraph numbered II.A. of the LEA’s Motion. The LEA moves that the Hearing Officer deem the Parent’s due process complaint to be legally insufficient because the LEA asserts that Parent’s rationale for the complaint, contained in paragraph numbered “7.,” has no actionable meaning under the IDEA. In the Parent’s due process complaint, Parent has stated that the Child has a “Multi Axis 1 diagnosis which cause[s] problems in the classroom as far as [the Child’s] behavior and inability to perform on grade level.”

This Hearing Officer surmises that Parent relied upon medical information immediately available to her when she drafted the due process complaint. But Parent is not a medical doctor and cannot be expected to elucidate this aspect of her due process complaint. She must rely upon medical or psychological experts to clarify this terminology. It appears that Parent acquired the above term from her review of the Child’s psychiatric or psychological evaluation because the terminology originates in the *DSM-IV-TR*. This professional mental health treatise is the current psychiatric-psychological manual in which personality disorders and diagnoses are categorically defined. This Hearing Officer also surmises that Parent obtained this personality attribution for the Child from a medical doctor or a psychological professional. It is not likely that Parent has independently accessed a psychiatric reference document to evaluate the Child’s classroom issues.

But Parent may utilize the term, “Multi Axis I diagnosis,” in her due process complaint

because the primary function of a due process complaint is to initiate a special education due process hearing under the IDEA. In the initial due process complaint, however, it is not necessary for the Parent to describe every detail of the Child's case. *See Schaffer v. Weast*, 546 U.S. 49 (2005).

At the due process hearing level of this proceeding, Parent will not be permitted to testify regarding psychiatric terminology unless she qualifies as an expert with proper credentials. This Hearing Officer anticipates that Parent will rely ultimately upon medical or psychological experts to define the term, "Multi Axis I diagnosis" at the due process hearing. Parent's experts will also be expected to describe the term's materiality and relevance to this Child's educational performance. But this Hearing Officer will not now dismiss the due process complaint merely because Parent has extrapolated medical or psychological references to describe her Child's special education problems.

On this issue, this Hearing Officer **RULES** that Parent has provided effective notice to the LEA of an IDEA actual case or controversy. Parent's use of psychiatrically based terminology in her due process complaint does not render the due process complaint defective on its face or legally insufficient under the IDEA.

2. The LEA asserts that that the Parent has failed to provide a legally sufficient description of the problem with supporting facts. Parent should include the requisite facts leading to the filing of a due process complaint. Parent has not provided any facts in support of her due process complaint in paragraph numbered "8."

This Hearing Officer **GRANTS** the LEA's request to dismiss the Parent's due process complaint on the ground that the Parent has not provided a legally sufficient complaint. It appears to this Hearing Officer that Parent has not outlined any facts in support of the due process complaint. Parent's complaint provides only the following factual information: "8. [The Child's] problems in a structured educational environment [have] persisted since pre-K." This

Hearing Officer **RULES** that the factual basis in support of this complaint is legally insufficient to support an IDEA actual case or controversy. Thus, this Hearing Officer requests that Parent respond to the question asked in paragraph numbered “8,” namely, “What happened that caused the problem?” It is insufficient at law to state, “_____’s problems” without identifying the specific problem or problems to which the Parent refers.

Parent is granted leave to amend her due process complaint to reflect a factual basis in paragraph numbered “8.” of the due process complaint. If parent elects to amend the due process complaint, she may re-file her complaint within seven (7) days from the date of this Order or by September 12, 2011.

3. The LEA asserts that the Parent has failed to provide a proposed resolution of the problem for the Child in Paragraph numbered “9” of the due process complaint. Parent has not suggested a resolution to the Child’s problem. If the Parent believes that the LEA has wrongfully denied special education eligibility and educational services to the Child, the due process complaint should state this fact in paragraph numbered “9.”

This Hearing Officer **GRANTS** the LEA’s request to dismiss Parent’s due process complaint because Parent has not provided a proposed resolution of the problem to the LEA. Parent states in her due process complaint that “No resolution was establish[ed], [the child] was continually placed in regular ed. classes.” Parent appears to desire special education eligibility for the Child but the due process complaint does not reflect this fact in the proposed resolution. Parent is granted leave to amend the due process at paragraph numbered “9.” by providing a proposed resolution of the problem to the LEA. Parent may re-file her due process complaint within seven (7) days as stated above.

It is **ORDERED** that the IDEA timeline recommences on September 12, 2011; Parent is granted leave to re-file her due process request reflecting the above amendments to her due process request.

// Sarah S. Freeman, Hearing Officer

Sarah Smith Freeman
Hearing Officer

Entered: *September 6, 2011*

CERTIFICATE

1, Sarah S. Freeman, hearing officer in the above special education due process hearing, certify that I have mailed the above Hearing Officer Ruling on Insufficiency and Order Recommencing the Timeline to all parties of record and to the VDOE on this 6th day of September, 2011.

// Sarah S. Freeman, Hearing Officer

Sarah Smith Freeman
Hearing officer

Sarah S. Freeman, Esq. VSB#21354
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VIRGINIA DEPARTMENT OF EDUCATION

DUE PROCESS HEARING

IN RE:

PRE-HEARING REPORT AND DISMISSAL ORDER

, (“Parent”),

Petitioner,

v.

Public Schools, (“ PS” OR “LEA”)

Respondent.

By regular mail to:

Ms.

Post Office Box

, Virginia

Kathleen S. Mehfoud, Esquire/Patrick T. Andriano, Esquire

ReedSmith LLP

Riverfront Plaza –West Tower

901 East Byrd Street

Suite 1700

Richmond, Virginia 23219

Counsel for the school division (“ PS” or “the LEA”) are Kathleen S. Mehfoud,

Esquire and Patrick T. Andriano, Esquire (“school board counsel”). Parent is

, (“parent”). The parent represents the child, (“the child”), *pro se*.

Sarah Smith Freeman, Esquire, has been duly appointed by the Supreme Court of Virginia to serve as the state administrative hearing officer (“hearing officer”). Brian K. Miller, Esquire, (“evaluator”), has been directed by the Virginia Department of Education, (“VDOE”), to document the progress of this due process hearing and to make periodic reports to the VDOE.

The child is a year old student who attends grade at this LEA. The parent asserts that the child has a disability and is entitled to receive special education services under the IDEA.

Parent seeks eligibility for IDEA special education services.

A pre-hearing telephone conference occurred on September 15, 2011 between the parent, school board counsel, the VDOE evaluator and this hearing officer. Parent did not participate in additional scheduling pre-hearing conferences occurring on August 19, 2011 and September 2, 2011.

Parent's special education due process request was filed originally on August 15, 2011. The special education due process request was deemed legally insufficient by hearing officer written order dated September 6, 2011. The IDEA timeline applicable to due process hearings was to recommence by parent's filing of an amended due process request by September 16, 2011. Parent was first required to amend the insufficient due process request by September 12, 2011 per the written hearing officer order. But at a pre-hearing conference on September 15, the parties orally agreed and the hearing officer directed the parent to re-file the amended due process request by September 16, 2011. School counsel also agreed to extend the date for submission of subpoenaed documentation until September 21, 2011. Mediation was planned for September 23, 2011.

School counsel moved the hearing officer to dismiss the case by written motion directed to the hearing officer on September 20, 2011. After the hearing officer learned that the parent did not re-file an amended due process request, this hearing officer contacted the parent to inquire about the amended due process request status. Parent has not responded.

A (30) day resolution session, preceding the forty-five (45) day hearing timeline, did not recommence on September 16, 2011 because parent did not re-file an amended due process request.

Thus, the Parent's due process request is **DISMISSED, IN ITS ENTIRETY, WITHOUT PREJUDICE** because Parent has failed to re-file the amended due process request by any deadline established by this hearing officer in accordance with 8 VAC 20-81-210(F)(2). Parent may re-file a due process request.

ENTER: *September 27, 2011*



// *Sarah Smith Freeman*

Sarah Smith Freeman
Hearing Officer

CERTIFICATE

I certify that I have mailed the above Pre-Hearing Report and Dismissal Order to the parties of record on this 27th day of September 2011.



Sarah Smith Freeman

Sarah Smith Freeman
Hearing Officer

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