16-016

To:

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Ron.Geiersbach@doe.virginia.gov; @a

Subject: In re

Dear Ladies and Gentlemen:

This case is on motion from the County School Board to dismiss this Due Process case for the second time alleging that the Notice of Insufficiency of the complaint filed by the mother of the child involved. The issues are whether or not the request for due process concerning the nature of the problems or the facts related to the alleged problem(s) and that the request still fails to sufficiently state a proposed resolution to the problem(s). The facts are a jumble of issues and actions (or not) which added information to the claims in the due process information supplied by the mother. There is no evidence of the child being evaluated fully, there is no evidence of an Individual Educational Program ("IEP") and factually the mother in one communication claimed that the child was designated as having Attention Deficit Disorder ("ADD") and in another communication she identified his condition as Attention Deficit Hyperactivity Disorder ("ADHD"). While both conditions are in the same family of disorders, an IEP might not fit the child's disorder if he is evaluated with the wrong diagnosis. Some of the facts given and times occurrences were inconsistent and not clear as to when and what happened. Additionally, the mother did not comply with the requirement of a proposed resolution to the problem(s) when dealing with that issue the parent states in one time that "I'm not the educators, they should know the answers to those questions" and the parent answered the question of the proposed resolution to the extent known "NONE", but suggested two other possibilities for educational setting and that the child needed an I.E.P. The child is currently in juvenile detention under the jurisdiction of the County Juvenile & Domestic Relations Court , was not enrolled at High School at the time and was attending school at home pursuant to State approval at the parent's request. The parent, likewise, did not allege whether she sought a child study meeting prior to initiating her due process hearing request, and does not contend that she ever requested any IDEA-based processes (Individuals with Disabilities Education Act (the IDEA) from any school within the School Board's control.

In light of all of the above and in the record by e-mails and postal delivery, the facts in this case are confusing and in some cases contradictory wherein the due process factual situation is questionable as to its nature of the problem or the facts relating to the alleged problem(s). Likewise, the parent clearly did not sufficiently state a proposed resolution to the problem(s). Pursuant to 20 United States Code Section 1415(b)(7)(A)(ii) – a legally sufficient request must provide:

(I!I) a description of the nature of the problem(s) of the child relating to such proposed initiation or change, including "facts relating to such problem(s)";

(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

See <u>Combs v. Sch. Bd. Of Rockingham Cnty.</u>, 15 F. 3d 357, 363-364 (4th Cir. 1994) " (S)chool boards must be given adequate notice of problems if they are to remedy them, and must be given sufficient time to respond to those problems before they can be held liable for failure to act."); See <u>Independent Sch. Dist. No. 719</u>, 106 LRP 1875 (SEA MN 2005) ("A school district may not be put into a position of having to guess what the problem may be"). Further, such guesswork and speculation is inconsistent with the express requirements of 20 U.S.C. Section 1415(b), (c) and (f). The Parent's failure to provide a sufficient description of the facts to the problem(s) and no satisfactory proposed resolution to the problem(s) to the extent known and available to the party at the time.)

This hearing officer finds this case to be one that involves eligibility and/or child find. While not totally factually clear, it appears to me that for whatever reason or facts the child was never evaluated by the Public Schools, but the parent seems to have gotten an repot by a psychologist suggesting or diagnosing ADA or ADHD. The child went from High School to Home Instruction at his mother's home and there was working on-line with an Atlanta-based school program. At some point the child was placed in juvenile detention facility where he is utilizing whatever educational programs are provided in conjunction with Public Schools teachers. I have no details as to how that system works. However, it appears from what I know it is not in the facts if the County Public Schools ever evaluated the child or was the child's issues reported to the school while the child was at High School. There is no evidence in the record that the child was ever placed in IDEA or that he ever received an I.E.P. Likewise, as to Section 504 of the Americans with Disabilities Act, if the child does not currently have a identified disability then that act may not be applicable to the child in this facility. It appears that the child may be able to seek an evaluation from High School when the child comes out of detention. That action would lead to an opportunity for giving the school any evaluations made by others and places the child in a situation which might be helpful for the child that could be found under IDEA and/or Section 504 assistance.

Regrettably, given what I have before me, a lack of consistency and a shortfall of facts as to the situation and no real response as to what resolution the parent was requesting for the child in this situation, I find this due process request does not meet the requirements as set forth by the federal government statutes and regulations (as does Virginia). Therefore, this hearing officer dismisses the due process request <u>without prejudice</u> with the hope that the child seeks evaluation by the school if he returns to public school after his detention is over.

<u>APPEAL RIGHTS:</u>

The decision of the hearing officer is final and binding on the parties in the case unless any aggrieved party to this due process hearing appeals to the appropriate State Circuit within 180 calendar days or to the appropriate Federal District Court within 90 calendar days of the date of this decision.

Sincerely yours,

Raymond E. Davis, hearing officer (omitted in e-mail by mistake)
VSB# 05381
November 4, 2015