

APR 28 2009

VIRGINIA DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION AND STUDENT SERVICES  
OFFICE OF DISPUTE RESOLUTION AND ADMINISTRATIVE SERVICES

(Child) )  
VS ) DUE PROCESS  
SCHOOL ) HEARING  
BOARD ( SB)) )

ORDER GRANTING INSUFFICIENCY CHALLENGE,  
MOTION TO DISMISS AND CANCELLATION OF  
PREHEARING CONFERENCE AND HEARING DATES

1. Preliminary Statement

By letter dated April 14, 2009, ("Parent"),  
filed "a Due Process hearing for my son [ ], for a  
F.A.P.E. Free Appropriate Public Education." Prehearing  
conference and hearing dates were then set.  
School Board (" SB") filed a Notice of Insufficiency and Motion  
To Dismiss, contending that Parent's due process complaint was  
insufficient as a matter of law and that all claims in Parent's  
due process complaint should be dismissed.

2. Parents Due Process Complaint  
Is Insufficient

Parent's due process complaint is attached hereto as  
Appendix 1. SB states that Parent's due process complaint  
"lacks a description of the nature of the problem including facts  
relating to such a problem and a proposed resolution". SB  
Notice of Insufficiency, p. 2.

20 USC §1415(b)(7)(A)(ii) states that a legally sufficient  
request for a due process hearing must provide:

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child and the name of the school the child is attending;

(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

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

Parent's request does not describe the nature of the problem including the facts relating thereto. See *Independent School District No. 719*, 106 LRP 1875 (SEA MN 2005) ("A school district may not be put into the position of having to guess what the problems might be.")

As argued by SB, the only issue raised by the Parent in the complaint pertains to the Parent's request to have a child-study meeting that was set to be held on April 14, 2009 continued to another date, which was subsequently done, i.e., reset for April 28, 2009. The child-study process identifies and recommends strategies to address a general education student's learning, behavior, communication, or development. See 8 VAC 20-80-10. A student in the child-study process may later be referred for an evaluation for special education but such students are not special education students covered by the Individuals With Disabilities Education Act (IDEA). Moreover, child-study issues cannot be tried in an IDEA due process hearing since a Hearing Officer's subject matter jurisdiction is limited to claims arising under the IDEA. VAC 20-80-76(B)(1).

Furthermore, Parent's instant request for a due process hearing does not set forth "a proposed resolution of the problem" as required by law. *Supra* at (IV). The only relief set forth by Parent in her request is to have a child-study meeting continued to another date, which as stated, was subsequently reset for April 28, 2009. If this is Parent's only requested relief, as appears to be the case from the face of Parent's written request (Appendix 1), nothing remains for this Hearing Officer to decide or resolve. See *C.O. and The Portland Public School*, LRP (SEA OR, 2005).

IDEA mandates that the non-complaining party have an opportunity to resolve the issues of a due process hearing prior to the hearing. Here SB has been deprived of this opportunity to resolve the dispute because Parent has not provided a description of the nature of the problem and the facts relating to such, nor has Parent provided the proposed resolution as required by the statute.

In sum, I find that Parent has not filed a sufficient due process complaint, and as such is not entitled to a due process hearing at this time.

### 3. Parent's Request Is Dismissed

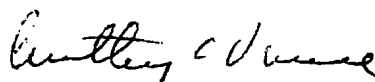
SB states that Parent's child is a regular education student who, as such, is not entitled to the procedural protections of IDEA. This Hearing Officer talked to Parent to inquire whether her child was in fact a regular education student and Parent answered affirmatively.

20 USC §1400(d) sets forth the purposes of IDEA, and in all instances IDEA applies only to "children with disabilities", i.e.,

special education students.\* Thus, Parent's child, as a regular education student, is not entitled to IDEA's procedural protections, including a due process hearing.

Wherefore it is ORDERED that Parent's request for a due process hearing (a) is insufficient because it fails to meet the minimum standards set forth in 20 USC §1415(b)(7)(A), *supra*, and therefore a due process hearing may not be ordered at this time; (b) Parent's child, as a regular education student, is not entitled to the procedural protections of IDEA, including a due process hearing, and Parent's complaint should therefore be dismissed; and (c) the prehearing conference set for May 1, 2009, and the hearings ordered to be held on June 2 and 3, 2009, are hereby canceled.

Date: April 28, 2009

  
\_\_\_\_\_  
Anthony C. Vance  
Hearing Officer

\*Note that Parent's instant complaint requests a free and appropriate public education for her child. §22.1-214 of the VA Code states that "The program developed by the Board of Education shall be designed to insure that all children with disabilities have available to them a free and appropriate education - - - ." (Emphasis added).

Certificate of Service

I hereby certify on April 29, 2009, that a copy of the foregoing Order was sent by facsimile to the following persons:

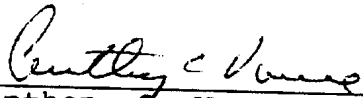
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Brian Miller, Esq.  
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by US Mail to:

Ms.

  
Anthony C. Vance  
Hearing Officer

Appendix 1

April 14, 2009

, VA

Virginia Department of Education  
Office of Dispute Resolution and Administration Services  
PO Box 2120  
Richmond, VA 23218

Dear Ron Geiersdach,

Hello, my name is

I am the parent of

Our address

is . I want to fill a Due Process hearing for my son, for a  
F.A.P.E. Free Appropriate Public Education.

He attends

School in

, VA. The principal is

. There is a scheduled Child Study Meeting today at 2:00pm and I am requesting  
a Due Process for the meeting to be rescheduled due to the following:

- Parent cannot be present due to job scheduling.
- His Therapist requires their presence for proper representation of my son.
- His Mentor/Juvenile Specialist needs to be present for his professional insight with juvenile males.
- Lawyer with Special Services.

The school is having the meeting without my full consent and they are denying my son. I  
have not been given the full picture of what this study entails and therefore I am  
requesting a continuance for this meeting immediately.

I am a parent who is truly interested in improving my son's education, but due to the  
scheduling of this meeting many of his support team cannot be present including me.

I can be reached at \_\_\_\_\_ and \_\_\_\_\_@yahoo.com. I expect for this  
meeting to stayed immediately and look forward to speaking with someone from the  
Office of Dispute Resolution and Administration Services today. Thank you.

Cc: \_\_\_\_\_, Superintendent of

County, Attorney Crystal Tyler.

Signed,