

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Hearing Officer

DECISION

Child's Name: BC

Date of Birth: xx/xx/xxxx

Date of Hearing: May 22, 2009

CLOSED HEARING

ODR No. 9862/08-09 AS

Parties to the Hearing:

Representative:

Parents:

Unrepresented

Unrepresented

Charter School:

Charter School Attorney:

Olivia Thorne, Asst. Principal
Pocono Mountain Charter School
16 Carriage Square
Tobyhanna, PA 18466

Daniel Fennick, Esq.
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1423 East Market Street
York, PA 17403

Date Record Closed: August 1, 2009

Date of Decision: August 1, 2009

Hearing Officer: Daniel J. Myers

INTRODUCTION AND PROCEDURAL HISTORY

Student (hereinafter “Student”)¹ is a 17 year old former student of the Pocono Mountain Charter School (Charter School). Student’s parent filed a due process hearing request while Student was still enrolled in the Charter School, seeking particular services for Student as well as documents and written communication from the Charter School. Because Student’s parent has since withdrawn Student’s enrollment in the Charter School, this matter is dismissed as moot.

ISSUE

Whether Student’s withdrawal from the Charter School renders this matter moot?

FINDINGS OF FACT

1. Student, whose date of birth is [Redacted], was enrolled in the Charter School on September 18, 2008 for the 2008-2009 school year. The Charter School received a copy of Student’s IEP, evaluation report and functional behavioral assessment from Student’s previous school.
2. On November 14, 2008, Student’s parent signed a permission to evaluate Student.
3. On February 17, 2009, Student’s parent signed another permission to evaluate Student.
4. Student’s parent alleges that Student’s behavior and school work regressed during this time period. Student’s parent also alleges that she requested the Charter School to implement a behavior management program, to provide copies of Student’s records, and to help Student with math and physics.
5. On March 24, 2009, Student’s parent filed a due process hearing request seeking:
 - Develop an IEP with a behavioral plan;

¹ All further references to Brandon will be impersonal and gender-neutral. This is intended not to be disrespectful, but rather to ensure Student’s confidentiality.

- Enable Student to attend vo-tech for 2009-2010;
 - Give Student extended time and assist Student with academics;
 - Give Student's parent records of previous and current school years;
 - Provide copies of all evaluations;
 - Clarify attendance, suspensions and Saturday detentions; and
 - Provide more written communication with parent.
6. On Friday, May 22, 2009, the parties and I arrived for a due process hearing as scheduled, but we did not have a court reporter present. Ultimately, court reporting services were made available by telephone only. Student's mother objected to telephonic court reporting services. After some discussion with the parties, I determined not to use telephonic court reporting services because the transcription would be very difficult under the circumstances. The hearing was rescheduled to Wednesday, August 19, 2009.
7. On or about June 24, 2009, Student's parent withdrew Student's enrollment from the Charter School.
8. On July 8, 2009, counsel for the Charter School requested that this case be dismissed due to Student's withdrawal from the Charter School.
9. On July 19, 2009, Student's parent objected to dismissal, arguing that the Charter School denied FAPE to Student for the 2008-2009 school year and that Student's withdrawal from the Charter School is irrelevant. Student's parent noted that she has two years within which to file a claim for FAPE denial.

DISCUSSION AND CONCLUSIONS OF LAW

A party may amend its original due process complaint notice only if the other party consents in writing to such amendment and is permitted a resolution session, or if

the hearing officer grants permission for amendment – but not later than 5 days before a due process hearing occurs. 20 USC §1415(c)(2)(E); 34 CFR §300.508(d)(3)

Parent seeks to amend the original complaint without complying with the law regarding amendment of complaints. Parent's original March 24, 2009 due process hearing request does not seek compensatory education for an alleged FAPE denial. Rather, the March 24, 2009 due process hearing request seeks prospective relief to obtain from the Charter School future educational services (behavioral plan, vo-tech, academic assistance), and to remedy communication problems that Student's parent was experiencing at the time with the Charter School (copies of previous and current school year records, evaluation reports, attendance, suspension and detention policies, and more written communication with parent.)

Contrary to Parent's July 19, 2009 argument, the original complaint did not seek a compensatory education remedy for the Charter School's alleged FAPE denial. Thus, all contentions in the March 24, 2009 due process hearing request, as well as the prospective relief sought by Student's parent to remedy those allegations, are rendered moot by Parent's withdrawal of Student from the Charter School. Because there no longer is a current case or controversy regarding those particular contentions, and because the complaint has not been amended properly to include allegations seeking compensatory education as relief for FAPE denial, this matter is dismissed.

CONCLUSION

The allegations in the March 24, 2009 due process hearing request, and the prospective relief sought by Student's parent to remedy those allegations, are rendered

moot by Parent's withdrawal of Student from the Charter School. Consequently, this matter will be dismissed.

ORDER

- The August 19, 2009 hearing is CANCELLED.
- This matter is DISMISSED and considered CLOSED.

Daniel J. Myers

Daniel J. Myers
HEARING OFFICER

August 1, 2009