

*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: DO

Date of Birth: xx/xx/xx

Date of Hearing: 11/05/08

### OPEN HEARING

ODR No. 9129/08-09 AS

#### Parties to the Hearing:

Parents  
Mr. & Mrs.

School District  
Central Bucks  
16 Welden Drive  
Doylestown, PA 18901

#### Representative:

Parent Attorney: None

School District Attorney  
Scott Wolpert, Esq.  
Timoney Knox, LLP  
400 Maryland Drive  
P.O. Box 7544  
Fort Washington, PA 19034

Date Record Closed: Nov. 10, 2008

Date of Decision: Nov. 24, 2008

Hearing Officer: Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

This case and a companion case which concerns the same Student and the same School District were commenced by School District due process complaints. In the first case, 9100/08-09 AS, the District sought a due process hearing to support the appropriateness of its reevaluation report in response to Parents' request for an independent educational evaluation (IEE). In the second case, 9129/08-09 AS, the District sought a hearing officer determination that the IEP it offered Student for the 2008/2009 school year is appropriate.

Parents opposed holding a hearing with respect to both cases, contending, first that the District had no right to file due process complaints concerning the matters in dispute. After e-mail correspondence notifying Parents that a consolidated hearing would take place on the District complaints, Parents requested a continuance to obtain counsel, which was granted. During the following 30 day period, Parents notified the District and the hearing officer that they were withdrawing their request for an IEE and also withdrawing the Student from the District for home schooling. When the District indicated that it would not withdraw its due process complaints notwithstanding the change in circumstances, the parties and counsel were notified that the consolidated hearing session would take place via telephone conference call in order to make a record of the facts, and that for reasons stated briefly in further e-mail correspondence, the District's complaints would be dismissed, assuming that the facts adduced at the hearing confirmed the e-mail correspondence.

## **ISSUE**

Should the Central Bucks School District's due process complaint concerning the IEP it offered Student in August 2008 be dismissed in light of Student's withdrawal from the District for home schooling?

## **FINDINGS OF FACT**

1. On August 25, 2008, the Central Bucks School District offered Student an IEP for the 2008/2009 school year. (S-2)
2. On September 1, 2008, Student's Mother rejected the IEP. (S-3)
3. The District filed a due process complaint to establish that its proffered IEP is appropriate for Student. (N.T. p. 10)
4. By e-mail messages dated October 6, 2008 and October 10, 2008, Parents announced their intention to withdraw Student from the District for home-schooling. (HO-1 at pp. 1, 2)
5. Student is currently an approved home schooled student. Student's Parents, therefore, have withdrawn Student from the Central Bucks School District. (N.T. pp. 10—13, 19; P-1)

## **DISCUSSION AND CONCLUSIONS OF LAW**

Parents disputed the Central Bucks School District's right to submit a due process complaint and seek a due process hearing to support the appropriateness of the IEP it offered to Student in August 2008.

There is, however, nothing in the IDEA regulations which precludes the District from filing a due process complaint to support the appropriateness of a proffered IEP which Parents rejected. In fact, both the federal and Pennsylvania special education regulations provide that the District may file a due process complaint with respect to the provision of FAPE to an eligible child. 34 C.F.R. §300.507; 22 Pa. Code §14.162(c).

In this case, however, the Parents submitted a home schooling program for Student which was approved in October 2008. At that time, Student withdrew from the District and began Student's home schooling program. As a result of the Student's withdrawal from the District, it is no longer responsible for providing Student with a program, placement or FAPE. Further, there is no indication that Parents are currently seeking appropriate special education services from the District in order to re-enroll the Student. Consequently, none of the bases for a due process complaint under §300.507(a)(1) currently exist..

Although there is nothing in the IDEA regulations which directly addresses a district's ability to file a due process complaint to determine the appropriateness of an offered IEP when a parent withdraws the child from the district for home schooling, the regulations do explicitly provide that a district may not use the due process hearing procedures to pursue an initial evaluation or a reevaluation of a home schooled student. 34 C.F.R. §300.300(d)(4) (i). It is highly unlikely that Congress intended to permit school districts to use the due process procedures to support the appropriateness of an IEP which cannot be implemented during the time an eligible student is home-schooled, while precluding such procedures to determine eligibility or current needs of a home schooled student whose parents decline to permit an evaluation. Much more directly, however, there is no point to using the due process procedures to determine the appropriateness of an IEP for a dis-enrolled Student who is not actively seeking an appropriate program from the District.

In opposing a hearing on the District's due process complaint after home schooling was begun with Student, Student's Mother noted that if Student re-enrolls in

the District after considerable time passes, the IEP the District wishes to defend may no longer be appropriate for Student's needs even if it is determined that it was appropriate at the time it was offered. (See HO-1 at pp. 4, 6) In accordance with the IDEA regulations, the District must review Student's IEP periodically, and at least annually, to assure that it continues to meet Student's needs. 34 C.F.R. §324(b) If Student does not re-enroll in the District for the remainder of the current school year, the IEP will necessarily need to be reviewed and revised before being implemented. It would still need to be reviewed for appropriateness in light of Student's current needs even if Student re-enrolled before the annual review date. In short, there is no good reason to engage in a lengthy process to examine the appropriateness of an IEP that is not a "working" document because the Student is no longer enrolled in the District. A hearing on that matter would have only a retrospective benefit at best if the District prevailed, and there was a pending claim by Parents, which is not the case. As Student's Mother pointed out, the time and expense incident to a full due process hearing on an IEP which has never been accepted and implemented would surely outstrip any potential benefit, such as precluding a claim for compensatory education for the period between the offer of the IEP and the date Student was withdrawn from the District. (HO-1 at pp. 4, 7)

### **CONCLUSION**

Under the facts and circumstances presented by this case, specifically, Parents' withdrawal of Student from the Central Bucks School District for approved home schooling, there is no basis for the District to proceed with its complaint to support the appropriateness of the IEP offered in August 2008, since the student is neither currently enrolled in the District nor seeking an appropriate program in order to re-enroll.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Central Bucks School District's due process complaint is **DISMISSED**.

*Anne L. Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER

November 14, 2008