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HEARING OFFICER DECISION/ORDER ON MOTION TO DISMISS

CHILD'S NAME: Student (File # 5818/05-06 KE)

South Allegheny School District

Date of Birth: xx/xx/xx

Type of Hearing: CLOSED

Date of Hearing: October 5, 2005

I. PARTIES TO THE HEARING

PARENTS:

Parents

DATE TRANSCRIPT RECEIVED:

October 11, 2005

PARENT REPRESENTATIVE:

HEARING OFFICER:

Dorothy J. O'Shea, Ph.D.

Signature: Hearing Officer

DISTRICT CONTACT:

Mrs. Christy Chicklo

South Allegheny School District

2743 Washington Blvd.

McKeesport, PA 15133-2017

October 12, 2005

Date of Decision/Order

DISTRICT REPRESENTATIVE:

Michael Brungo, Esquire

Maiello, Brungo & Maiello

1 Churchill Park, 3301 McCrady

Pittsburgh, PA 15235

HEARING OFFICER DECISION/ORDER ON MOTION TO DISMISS

CHILD'S NAME:

Student (File # 5818/05-06 KE)
South Allegheny School District

I. BACKGROUND INFORMATION

Student, an eligible student under 22 Pennsylvania Code at Chapter 14, and a resident of the South Allegheny School District (i.e., the District), was born [redacted]. Student's mother, Ms. Parent, made an August 2005 Due Process Hearing Request concerning Student's educational placement. On September 21, 2005, Michael Brungo, Esquire, on behalf of the District, challenged the sufficiency of the Parent's August 2005 Due Process Hearing Request.

FINDINGS OF FACT

- 1) Student, a resident of the District, was born xx/xx/xx (Hearing Officer Exhibit 2: HO 2).
- 2) On August 25, 2005, the District offered to Student's Parent ° *Notice Of Recommended Educational Placement* (NOREP) (HO 2).
- 3) On August 25, 2005, Student's mother did not approve the August 25, 2005 NOREP stating, "*inadequate program for Student's special needs-severe language processing as well as other specific diagnosis*" (HO 2).
- 4) On September 10, 2005, the Office for Dispute Resolution (ODR) assigned the Hearing Officer to preside over the due process hearing (HO 1).
- 5) On September 21, 2005, the District challenged the sufficiency of the Parent's August 25, 2005 Due Process Hearing Request (HO 2).
- 6) On September 23, 2005, the Hearing Officer made a determination that the Parent's August 25, 2005 Due Process Hearing Request is insufficient (HO 3).
- 7) On September 23, 2005, the Hearing Officer granted the Parent the opportunity to amend her August 25, 2005 Due Process Hearing Request. The Hearing Officer directed the Parent to send her written, amended Due Process Hearing Request to the Hearing Officer and to the District by October 1, 2005 (HO 3).
- 8) On September 30, 2005, the Hearing Officer received a FAX containing the amended Due Process Hearing Request. However, neither the September 30, 2005 Fax, nor the September 29, 2005 Amended Due Process Hearing Request contained within the received Fax, was addressed to the District (HO 4).
- 9) On October 1, 2005, the Hearing Officer denied the Parent's September 29, 2005 Motion for Recusal (HO 5).
- 10) On October 3, 2005, the District summarized the Resolution Meeting held with the Parent on September 28, 2005. The September 28, 2005 Resolution Meeting did not result in an agreement reached between the parties (Joint Exhibit 1; Notes of Transcript 19-20: NT 19-20).
- 11) On October 5, 2005, during Student's hearing, the District objected to the Parent's September 29, 2005 Amended Due Process Hearing Request because the Parent did not follow the Hearing Officer's September 23, 2005 directive to submit in writing to the District by October 1, 2005 a detailed explanation of the Parent's Request for Due Process (NT 13-15, 20-21).
- 12) On October 5, 2005, the Parent testified she did not follow the Hearing Officer's directive to submit in writing to the District by October 1, 2005 a detailed explanation of the Parent's Request for Due Process (NT 20-21).
- 13) On October 5, 2005, the District made a Motion to Dismiss, requesting that the Hearing Officer dismiss the Parent's Request for Due Process on the District's claim of an insufficient September 29, 2005 Amended Due Process Hearing Request (NT 21-22).
- 14) On October 5, 2005, the Hearing Officer granted a continuance to October 14, 2005 to review both the Parent's September 29, 2005 Amended Due Process Hearing Request and the District's October 5, 2005 Motion to Dismiss (NT 24-28).

IV. ISSUE

Should the District's October 5, 2005 Motion to Dismiss be granted?

V. DISCUSSION AND CONCLUSIONS OF LAW

This Hearing Officer directed the Parent to submit her Amended Due Process Hearing Request to the District by October 1, 2005. The Parent testified she did not follow the Hearing Officer's directive (HO 3; NT 20-21).

However, the Parent's September 29, 2005 Amended Due Process Hearing Request is insufficient. There is an insufficient description of the nature of the problem, including facts relating to such problem. There is an insufficient proposed resolution of the problem (HO 4).

On October 5, 2005, Student's mother had the opportunity to present evidence in support of her claim that her due process hearing request was sufficient. 34 CFR §300.509. See Santhouse V. Bristol Township School District, (E.D. Pa. 1997) 26 IDELR 720. Because the September 29, 2005 Amended Due Process Hearing Request is insufficient, the Parent's Due Process Hearing Request, initiated in August 2005, is dismissed.

**HEARING OFFICER DECISION/ORDER
IN RE: STUDENT
(ODR File No. 5818/05-06 KE)**

AND NOW, this 12 day of October 2005, the School District is ordered to take the following action:

1. The District's October 5, 2005 Motion to Dismiss is granted.
2. The Parent's August 25, 2005 Due Process Hearing Request, amended September 29, 2005, is dismissed.
3. The Hearing scheduled for October 14, 2005 is cancelled.

Dorothy J. O'Shea, Ph.D.
Hearing Officer

DECISION DATE:
