

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
State Enforcement and Investigation Division
Student Hearing Office
Van Ness Elementary School
1150 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 442-5556

In Re the Matter of :)
) ¹
Parent on behalf of Student,)
))
Petitioner,)
))
))
v.)
))
The District of Columbia)
))
))
Respondent.)
_____)

Date of Complaint: April 24, 2009
Date of Pre-hearing: May 27, 2009
Date of Hearing: June 26, 2009

Notice of Insufficiency of Complaint

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STUDENT HEARING OFFICE
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HEARING OFFICERS' DECISION (HOD) (Revised)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney Domiento Hill
Law Offices of James E. Brown and Associates
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Washington, D.C. 20005

Counsel for Respondent: Assistant Attorney General, Kendra Berner
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Washington, D.C. 20002

I Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed prior to public distribution. *The Hearing Officer's Decision (HOD) is revised to reflect Petitioner's filing of an opposition to Respondent's Notice of Insufficiency, inadvertently omitted in the prior decision; and a decision based on representations of both parties.*

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004
(IDEIA), (Public Law 108-446)
DISTRICT OF COLUMBIA PUBLIC SCHOOLS
IMPARTIAL DUE PROCESS HEARING**

I. INTRODUCTION

On April 24, 2009, Counsel, on behalf of parent and the student, initiated a due process complaint alleging that the District of Columbia Public Schools, hereinafter referred to as "DCPS", denied the student a Free Appropriate Public Education ("FAPE"), by failing to comply with the December 30, 2008 hearing officer's decision.

On May 1, 2009, Respondent, hereinafter referred to as "DCPS" filed "District of Columbia Public Schools' Notice of Insufficiency and Response to Petitioner's Due Process Complaint". The Notice of Insufficiency alleges that the complaint is insufficient because it fails to comply with Standard Operating Procedures, Section 301.2(C)(e), which requires parent's signature on the complaint.

Respondent represents that although a parent's signature is not required by the IDEIA, such a requirement is not inconsistent with the IDEIA, which requires that Local Education Agencies (LEA's) that receive assistance under the IDEIA "establish and maintain procedures" to implement the Act, ensuring procedural safeguards with respect to the provision of a FAPE; and the SOP sets out such procedures, providing guidelines for handling due process complaints in the District of Columbia.

Respondent further represents that requiring that the party sign the complaint him/herself is not a barrier in the way of filing a due process complaint, however, merely provides DCPS notice that the complaint represents the parent's desired course of action.

Respondent concluded by submitting that the absence of the above referenced information has resulted in insufficient notice to the agency; and as such, pursuant to 20 U.S.C. §1415(b)(7)((13) the Petitioner may not have a due process hearing until he files a notice that meets the requirements of 20 U.S.C. §1415(b)(7)(A)(ii).

On May 6, 2009, Petitioner filed "Petitioner's Opposition to the Respondent's Notice of Insufficiency", responding that the Standard Operating Procedures Manual of the Office of Student Hearing does not "trump" the sufficient requirements of the IDEIA.

Petitioner represents that the Standard Operating Procedures are designed to implement the requirements of the IDEA and to provide notice to the public; and that if there is any conflict between the Standard Operating Procedures and the IDEA or the Blackman/Jones Consent Decree, the IDEA or the Blackman/Jones Consent Decree governs...(emphasis added).

Petitioner further represents that in the instant matter, Respondent attempts to use the Standard Operating Procedures Manual as a "tactic" to delay the Petitioner's right to a due process hearing stating that because the parent failed to sign the complaint, the complaint is insufficient; which is a false statement.

Petitioner represents that DCPS' reliance on the Standard Operating Procedures Manual to prove insufficiency is misplaced; and inconsistent with the IDEIA's standards for insufficiency, and thus conflicts with the law of the land. "Therefore, and as the IDEIA states, the DCPS' argument that the complaint is insufficient because the parent did not sign it conflict with the IDEIA and therefore must be ignored".

Petitioner concludes, assuming arguendo, that the Petitioner and not her representative is required to sign the complaint, the Petitioner has executed the complaint in this matter, and the Respondent's argument is moot. Petitioner also concludes that the Hearing Officer should find that the Respondent's Motion is not support by the law or facts in this case, and said motion by DCPS should be denied and the hearing allowed to proceed because the complaint is sufficient.

II. JURISDICTION

This notice is invoked in accordance with the rights established pursuant to Standard Operating Procedures, §303 (A)(1) and §301.2(C)(e); and 34 C.F.R. §300.508(d) of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA").

III. DECISION

In accordance with 34 C.F.R. §300.508(d) of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"); within fifteen (15) days of receipt of the due process complaint, DCPS, as Respondent, notified the Student Hearing Office and Petitioner's Counsel, that the complaint failed to meet the requirements of §301.2(C), and is insufficient.

IDEA, 34 C.F.R. §300.508 requires that a due process complaint must include: the name of the child; address of the residence of the child; name of the school the child attends; in the case of a homeless child or youth, available contact information, and the name of the school the child is attending; a description of the nature of the problem; and a proposed resolution of the problem.

IDEA does not require the signature of parent or the complaining party on the complaint. However, it requires that the public agency establish procedures that require either party, or the attorney representing a party, provide to the other party a due process complaint, which must remain confidential.

Additionally, IDEA does not preclude state agencies from establishing procedures which impose upon parties requirements greater than it requires by statute; as long as the procedures established by the state agency do not conflict with, or detract from, the statutory requirements; and the state agency has determined that the additional requirements are necessary to implement the statutory requirements, within its jurisdiction; and the additional requirements are not unduly burdensome to the Petitioner.

The Hearing Officer finds that at the time that the District of Columbia established procedures governing the filing of an administrative due process complaint in these matters, specifically, Standard Operating Procedures, §301.2(C)(e); it determined that the signature of parent or the complaining party on the due process complaint, was not only necessary to implement IDEA's regulations governing filing of an administrative due process complaint, in the District of Columbia; but also that requiring parent to sign the complaint, was not unduly burdensome to Petitioner.

The Hearing Officer finds that the Standard Operating Procedures, §301.2(C)(e); does not conflict with or detract from 34 C.F.R. §300.508 (a) and (b) of the IDEA; however, merely supplements IDEA, by establishing an additional requirement which it deems as a necessary requirement, in the District of Columbia; and that such requirement is not unduly burdensome to Petitioner, although it may require additional effort by Petitioner's Attorney to meet with parent to ensure his/her signature on the complaint, prior to filing the complaint.

In "Petitioner's Opposition to the Respondent's Notice of Insufficiency", attached is a signed copy of the due process complaint, which was not included in the April 24, 2009 due process complaint. According to Standard Operating Procedures, §303(A)(2) a due process complaint may only be amended if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting held pursuant to 20 U.S.C. §1415(f)(1)(B) and any controlling federal or local regulations; or the Hearing Officer grants permission to amend, at any time not later than five (5) days before the due process hearing begins.

Based on the aforementioned, it is the Hearing Officers' Decision that the April 24, 2009 due process complaint is insufficient, because it fails to include the signature of parent, or the complaining party, in violation of Standard Operating Procedures, §301.2(C)(e).

It is also the Hearing Officer's Decision that the best interests of the student would be served if Petitioner is granted permission to amend the April 24, 2009 due process complaint, consistent with the requirements of Standard Operating Procedures, §303(A)(2)(a)(ii) and (b). Petitioner's resubmission of the April 24, 2009 due process complaint with parent's signature with its Opposition to Respondent's Notice of Insufficiency, fail to satisfy the SOP's requirements for amending the complaint.

In addition, according to SOP, §303 (A)(2)(b), if an amended due process complaint is filed, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint. Therefore, consistent with this decision, upon Petitioner's filing of the amended due process complaint, the complaints will be consolidated, and the due process complaint filed on April 24, 2009, will be administratively closed.

IV. ORDER

It is on this 12th day of May, 2009, hereby:

(1) **ORDERED**, that Petitioner is granted permission to amend the April 24, 2009, due process complaint, consistent with Standard Operating Procedures, §§303(A)(2)(a)(ii) and (b), and it is further

(2) **ORDERED**, that this decision and order are effective immediately.

V. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date of this Decision and Order, in accordance with 20 U.S.C. 1415 (i)(1)(A) and 34 C.F.R. Section 516(b).

Ramona M. Justice

5-12-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Domiento Hill.: Fax: (202) 742-2098
Attorney Kendra Berner