

*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.*

IN THE PENNSYLVANIA OFFICE FOR DISPUTE RESOLUTION

**Final Decision and Order<sup>1</sup>**

ODR File No. 2603-1112AS

CLOSED HEARING

Child's Name:<sup>2</sup>  
Date of Birth: [redacted]

Parties to the Hearing

Representative

[Parent]

*Pro se*

York City School District  
31 N. Pershing Avenue  
York, PA 17401

Christopher J. Conrad, Esquire  
Marshall, Dennehey, Warner, Coleman  
& Goggin, P.C.  
4200 Crums Mill Road, Suite B  
Harrisburg, PA 17112

Record Closed: December 19, 2011

Date of Decision: December 19, 2011

Hearing Officer: Brian Jason Ford

**SUFFICIENCY DETERMINATION AND DISMISSAL**

English is not the Parent's native language. The Parent is fluent and conversational in English and can read English, but does not understand formal writing. The Parent and I have spoken on the phone, and the Parent has asked me to write the way that I speak

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<sup>1</sup> This Sufficiency Determination and Dismissal is formatted as a final decision and order to indicate both finality and appealability. The document is referred to as a "decision" throughout. It is within the discretion of the Office for Dispute Resolution whether or not to publish this document as a Hearing Officer Decision on its website.

<sup>2</sup> Other than this cover page, the child and parents names are not used to protect their privacy. "Parent" and "Student" is used instead. Other identifying information, such as the Student's gender, is omitted to the extent possible.

and to use small words. I will try to honor that request. Some legal terms must be used, but I explain them.<sup>3</sup>

If the Parent does not understand this decision, the Parent should call the Special Education Consult Line at 1-800-879-2301.

I am granting the York City School District's (York) Sufficiency Challenge and Motion to Dismiss and am dismissing the Parent's complaint. This means that I will not hear the Parent's case. The Parent can appeal this decision to court. This means that the Parent can ask a judge to look at this decision and see if I made a mistake. I am sending documents to the Parent along with this decision that explain how to appeal it.

### **The Law**

School districts have to educate the students who live inside of their boundaries. York has to educate all of the students who live inside of York, including students with disabilities. York does not have to educate the students who do not live in York.

There are laws that protect children with disabilities. The main special education law is called the Individuals with Disabilities Education Act or IDEA.<sup>4</sup> The IDEA and some Pennsylvania laws<sup>5</sup> say that school districts have to educate children with disabilities. These laws allow parents and students to request a due process hearing when there is a dispute about how a child with disabilities should be educated.<sup>6</sup> In a due process hearing, an independent hearing officer (somebody who is not on the District's side or the Parent's side) listens to both sides, looks at evidence, figures out if the law has been broken, and then says what should happen if the law was broken.

Parents who want a due process hearing have to ask for one in writing. The hearing request is sometimes called a "complaint." The complaint has to have information about the family (like name and address). The complaint also has to include three things that tell the hearing officer and the school district what the disagreement is about.<sup>7</sup> The parents have to:

1. Write what the nature of the problem is (what the disagreement is about),
2. Write some facts about the disagreement, and
3. Write a proposed resolution (what parents want the hearing officer to do to fix the problem).

Parents can get help from lawyers and advocates to write a complaint. The Parent can get information about who can help by calling the Special Education Consult Line at 1-800-879-2301.

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<sup>3</sup> Some formal legal citation is also necessary. I have put all citation in footnotes.

<sup>4</sup> 20 U.S.C. § 1400 *et seq.*

<sup>5</sup> The state regulations implementing and supplementing the IDEA are found at 22 Pa Code § 14 *et seq.*

<sup>6</sup> See 20 U.S.C. § 1415

<sup>7</sup> See 20 U.S.C. § 1415(b)(7)(A).

If a school district gets a complaint, and believes that the complaint does not say everything that it must say, the school district can send the hearing officer a document called a sufficiency challenge.<sup>8</sup> When the hearing officer gets the sufficiency challenge, the hearing officer must look at the complaint and see if it has all of the information it must have.<sup>9</sup> Then, the hearing officer tells the parent and the school district if the complaint is sufficient.

### **The Complaint and the Sufficiency Challenge**

In Pennsylvania, there is a form that people can use to request a due process hearing.<sup>10</sup> The Parent used that form to request a hearing. ODR received the form on November 30, 2011. On the form, the Parent wrote that the Student goes to school in [another school district]<sup>11</sup>, and lives in [a town in that other school district].<sup>12</sup> There is a second parent not residing with the Student who lives in York.<sup>13</sup>

A section of the form allows the Parent to say what the nature of the problem and proposed resolution are. The Parent wrote the following in that section:

“I want to move back to my house, in York but I can't due to my [child's] school where [my child] would be atending. I moved from my house because of [my child's] school [my child] was being abused from [the] teacher, students, and was failing. Now [my child] is doing wrilly good.”<sup>14</sup>

York filed a Sufficiency Challenge on December 14, 2011. In the Sufficiency Challenge, York asks me to dismiss the complaint, meaning that I should not hear the Parent's case and York should not have to defend itself. York says that the Student does not live inside of York, and so York does not have to educate the Student.<sup>15</sup> York also says that the Complaint is not sufficient because the Parent does not say what special education law was broken or how, and does not propose a resolution.

### **The Pre-Hearing Conference Call**

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<sup>8</sup> See 20 U.S.C. § 1415(c)(2)(A)

<sup>9</sup> Sufficiency determinations must be made on the face of the Complaint. 20 U.S.C. § 1415(c)(2)(D). For reasons set forth herein, I will also consider information disclosed during a pre-hearing conference call.

<sup>10</sup> The form, titled Due Process Complaint Notice, is promulgated pursuant to 20 U.S.C. § 1415(b)(8).

<sup>11</sup> Indicating that the Student attends the [redacted] School District.

<sup>12</sup> To the best of my understanding, the Parent's address is in the [redacted] School District.

<sup>13</sup> The second parent is not a party to this matter. All references to the Parent in this Sufficiency Determination are to the parent that requested this hearing unless otherwise indicated.

<sup>14</sup> I understand that English is not the Parent's native language. Writing errors are easily forgiven. However, it is important to present the Parent's original spelling, grammar and punctuation. This shows, in part, why I relied on statements made during a conference call - and not just the Complaint on its face - when making this decision.

<sup>15</sup> A student's residency is not always determinative. Students may properly bring claims against their former school districts, provided that such claims fall within the IDEA's statute of limitations. In this case, there are allegations of York's improper conduct in the past, but the Parent seeks only prospective relief.

The Parent, York's attorney and I all spoke during a conference call on December 19, 2011. During the call, the Parent explained to me why the hearing was requested and exactly what outcome the family wants. The District denied some of what the Parent said during the call, but there was some agreement too.

The Parent used to live in York and the Student used to attend York's schools. As written in the Complaint, the Parent said that the Student was abused and bullied by teachers and students in York. York denies that. At some point, the Parent came to believe that the only way to change where the Student goes to school was to move out of York. The Parent then moved to [redacted town].

Both parties (the Parent and York) agree that the Parent and Student live in [redacted town]. Both agree that the Student goes to school in [redacted district] in a program operated by [the IU]. The Parent wants to move back to York, and claims to own a house in York. York did not agree or disagree that the Parent owns a house in York, but both parties agree that the Parent and the Student do not live in York.

The Parent and the Student plan to move back to York in two weeks from the date of this decision. York will not commit to keeping the Student in the [IU] placement when the Student returns, and argues that such demands are premature and go beyond what is stated in the Complaint.

The Parent did not use these exact words, but it is very clear that the Parent wants me to force York to keep the Student in the [IU] classroom in [redacted district] after the family returns to York.

### **Discussion**

The District's legal arguments are correct. The Complaint is not sufficient. The Parent only hints at the nature of the problem. More importantly, the Parent does not propose a resolution *within the Complaint*. I completely understand that it is much easier for the Parent to just tell me what the problem is and what I should do, but due process hearings are formal and the complaint must be written. The form that the Parent used was designed to make it easier to write complaints.

Usually, if a parent submits a complaint and the complaint does not have all of the required information, the parent is allowed to amend the complaint. That is, the hearing officer lets the parent send in a new complaint that has all of the required information. Based on the conference call, I find that even if the Parent were given an opportunity to propose a resolution in writing, I would still have to grant York's request to dismiss this hearing.

I do not have the power to do what the Parent is asking me to do. If the Student lived in York, I could decide if the programs and services that York offered to the Student met the Student's needs. I could also order York to provide an appropriate program. But I cannot force York to keep the Student in the [IU] program before the Student moves to

York. York will be required by law to offer the Student a free appropriate public education after the Student moves into York, but not before.

There are some laws that say what should happen when a student with an IEP moves from one district to another. Those laws will help determine where the Student should go to school in the short term when the Student moves back to York. I cannot give legal advice to either party, but the Parent may call the Special Education Consult Line at 1-800-879-2301 for information.

A formal order dismissing this due process hearing follows. In that order, I say that I am "relinquishing jurisdiction." This means that once this order is sent, I will no longer be involved in the case. I will not be able to communicate with the Parent or York. I say this because there has been some confusion about whom I can and cannot talk to over the course of this hearing.

### **ORDER**

And now, December 19, 2011, it is hereby **ORDERED** that the above-referenced matter is **DISMISSED** and all jurisdiction is relinquished.

/s/ Brian Jason Ford  
HEARING OFFICER