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Pennsylvania  
Special Education Hearing Officer

DECISION

Child's Name: DO

Date of Birth: XX/XX/XX

Date of Hearing: 11/05/08

CLOSED HEARING

ODR No. 9100/08-09 AS

Parties to the Hearing:

Parents  
Mr. & Mrs.

School District  
Central Bucks  
16 Welden Drive  
Doylestown, PA 18901

Date Record Closed: Nov. 10, 2008

Date of Decision: Nov. 24, 2008

Representative:

Parent Attorney: None

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

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 appropriateness of the reevaluation of Student completed in March 2008 be dismissed in light of the Parents' withdrawal of their request for an IEE and withdrawal of Student from the District?

## **FINDINGS OF FACT**

1. After the Central Bucks School District completed a reevaluation of Student in March 2008, Parents requested an independent educational evaluation (IEE). (N.T. p. 9; S-1)
2. Since Central Bucks School District declined to provide an IEE at public expense, it subsequently filed a due process complaint to support the appropriateness of its evaluation in accordance with 34 C.F.R. §300.502(b)(2). (N.T. p. 9)
3. 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)
4. Student is currently an approved home schooled student. Parents, therefore, have withdrawn Student from the Central Bucks School District. (N.T. pp. 10—13, 19; P-1)
5. By e-mail message dated October 17, 2008, Parents withdrew their request for an IEE, and confirmed the withdrawal of their IEE request in testimony on the record at the due process hearing on November 5, 2008. (N.T. p.10; HO-1 at 8)
6. Notwithstanding the withdrawal of Parents' IEE request, the District continued to seek a decision on the merits of its due process complaint unless Parents withdrew their IEE request with prejudice. (HO-1 at 2)

## **DISCUSSION AND CONCLUSIONS OF LAW**

Parents initially disputed the Central Bucks School District's right to seek a due process hearing on its own behalf when the District filed its due process complaint to support the appropriateness of its reevaluation of Student conducted in the winter/spring of 2008. As noted in an e-mail message to the parties however, the IDEA

regulations give the District no discretion with respect to its response to a parental request for an IEE at public expense. (*See* HO-1, p. 13) Specifically, a school district must either provide the IEE at public expense or request a due process hearing to support the appropriateness of its own evaluation. 34 C.F.R. 300.502(b)(2). Consequently, as long as Parents were asking the District to pay for an IEE, the District was not only permitted to seek a due process hearing to establish the appropriateness of its recent reevaluation of Student, but was required to do so if it refused the Parents' request.

The circumstances were significantly altered, however, once the Parents withdrew their IEE request. At that point, the District was no longer required to proceed with a hearing concerning the appropriateness of its evaluation. Indeed, most school districts promptly withdraw due process complaints based upon an IEE request when notified that parents have decided to drop that demand.

Nevertheless, there is certainly nothing in the IDEA regulations which precludes the District from continuing with a hearing to support the appropriateness of an evaluation with which Parents disagree. In fact, both the federal and Pennsylvania special education regulations provide that the District may file a due process complaint with respect to the evaluation of an eligible child. 34 C.F.R. §300.507; 22 Pa. Code §14.162(c). Moreover, since an eligible student's program is based upon needs identified in the evaluation, it is understandable that a district might elect to pursue a hearing to obtain an order that its current evaluation is appropriate when parents reject the district's evaluation results.

That rationale is severely undercut, however, when the student is no longer enrolled in the District by the time a hearing is held, as in this case. Here, the Parents

withdrew the Student and began a home schooling program for Student, which was approved by the District in October 2008. Consequently, there is no immediate need to determine that the evaluation is appropriate since it is not currently being used as a basis for providing special education services to the Student. Under these circumstances, a hearing on the merits of the appropriateness of the District's evaluation would provide no useful guidance or information to the parties. It is uncertain whether Student will ever re-enroll in the District, much less whether the District's evaluation would be appropriate at that time, even if the District successfully proves that it is presently appropriate. If Student re-enrolls in the District, it may be at or past the time when a reevaluation is required, or Student's needs may change due to many reasons, or the Parents could request a new evaluation. *See*, 34 C.F.R. §300.303. In the event, Student re-enrolls in the District less than a year after completion of the most recent reevaluation, the District could support the appropriateness of its reevaluation at that time, assuming that a dispute continues over the reevaluation.

### **CONCLUSION**

The facts and circumstances presented by this case, specifically, Parents' withdrawal of their request for a publicly funded IEE, and their withdrawal of Student from the Central Bucks School District for approved home schooling, support Parents' request to dismiss the District's due process complaint to support the appropriateness of its most recent reevaluation of the Student.

### **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 24, 2008