

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF EDUCATION

In the Matter of [STUDENT] v. Minneapolis
Public School District, No. 001

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISMISSAL**

The Student's parent, [REDACTED] (Parent), residing at [REDACTED], appears in this matter on behalf of the named Student and Parent, without legal representation. Laura Tubbs Booth, Booth & Lavorato, LLC, 10520 Wayzata Blvd, Suite 200, Minnetonka, Minnesota 55305, appears on behalf of the Minneapolis Public Schools, Special District, No. 001 (School District).

Based upon the files, records and proceedings in this matter, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 15, 2014, the Minneapolis Public Schools, Special District No. 1 (School District) received a request for a special education due process hearing dated January 15, 2014 filed by the Parent on behalf of the Student.

2. On January 16, 2014, the Parent's due process hearing request was received by the Minnesota Department of Education, through which Chief Administrative Law Judge Tammy L. Pust was appointed as the independent hearing officer in this matter.

3. This request for a due process hearing request was the fifth such request filed by the Parent on behalf of this Student against the School District, and the second hearing request filed by the Parent within the first month of the Student's December 2013 re-enrollment in the School District.¹

4. On January 21, 2014, the parties participated in a Prehearing Conference by telephone conference call, during which the parties agreed to hold a resolution session on January 29, 2014 at 3:00 p.m. The Parent agreed to participate in the resolution session at that date and time by telephone and provided her desired contact information to the School District for this purpose.²

5. On January 21, 2014 following the Prehearing Conference, the Chief Administrative Law Judge issued a Second Prehearing Order which, in relevant part, set the

¹ See ORDER OF DISMISSAL in *Minneapolis Public Schools v. J.J.E.*, Docket No. 84-1300-31280, for a complete recitation of the series of hearing requests filed by the Parent against the School District relevant to the educational services provided to this Student.

² Transcript of January 21, 2014 Prehearing Conference, pages 21-24.

matter for hearing on February 10-11, 2014 and identified the following issues for determination at the hearing:

- a. Has the School District implemented the Student's current IEP as written?
- b. Has the School District made unauthorized changes to the Student's IEP?
- c. Has the School District changed the Student's educational setting without authorization?
- d. Has the School District failed to provide the Student with modified assignments as required by his IEP?
- e. Has the School District failed to provide the Student with samples of how to do homework and in-class assignments?
- f. Has the School District failed to provide the Student with textbooks for his use at home?
- g. Has the School District failed to implement the Student's positive behavior plan?

[h]... [Did] the School District retaliate[] against the Parent in violation of the IDEA, as a result of her filing a December 10, 2013 request for a due process hearing, with respect to actions related to the identification, evaluation or educational placement of the Student or the School District's provision of a free and appropriate public education. Specifically, the claim raises the following issues for determination:

- [1] Did the School District improperly restrict the Parent from meeting with the Student's teachers with regard to matters related to his educational progress and/or services?
- [2] Did the School District improperly restrict the Parent from meeting with administrators with matters related to his educational progress and/or services?

6. On or about January 24, 2014, the School District mailed to the Parent a document titled "Notice of Conciliation Conference" which indicated that a "conciliation conference" was scheduled for January 29, 2014 at 3:00 p.m., and that the "meeting will also serve as the Resolution Session."³

7. The Parent received and reviewed the above-referenced notice on or before January 29, 2014, as evidenced by the fact that she filed a complaint concerning the notice with the Minnesota Department of Education on that date.⁴

8. The School District convened the joint conciliation conference and resolution session on January 29, 2014 at 3:00 p.m., the time and date agreed to by the parties at the Prehearing Conference and as ordered by the Chief Administrative Law Judge in the First Prehearing Order. In attendance on behalf of the School District were: [REDACTED], a Due

³ Notice of Conciliation Conference, filed as Exhibit 69 to School District's Second Amended Exhibit List.

⁴ Special education complaint dated January 29, 2014 provided by Parent to MDE and copied to the Chief Administrative Law Judge with reference to this matter.

Process Compliance Specialist; [REDACTED], Director of Special Education; and [REDACTED], Assistant Principal. These individuals attempted to contact the Parent by telephone at the number she had provided. The Parent did not answer the several placed calls and failed to appear, either in person or by telephone.⁵

9. During a second Prehearing Conference held by telephone conference call on February 7, 2014, the Parent: (1) challenged the legal sufficiency of the resolution session in that the School District failed to invite the Student and relevant members of the Student's IEP Team; and (2) indicated her intent to withdraw her due process hearing request and not to appear at the hearing then scheduled for February 10-11, 2014.⁶

10. Following the second Prehearing Conference, the Parent filed with the Chief Administrative Law Judge a written statement indicating that she was "withdrawing [her] request for a due process hearing without prejudice regarding OAH Docket No 84-1300-31236."⁷

11. On February 7, 2014, the Chief Administrative Law Judge issued a Fourth Prehearing Order wherein the hearing was rescheduled to an unidentified future date and the Parent's request to withdraw her due process hearing request was taken under advisement pending the Court's review of evidence related to the resolution session.⁸

⁵ Transcript of January 29, 2014 Resolution Session and Conciliation Conference, page 3, line 11, through page 4, line 20.

⁶ Transcript of February 7, 2014 Prehearing Conference, page 9, lines 19 through 25.

⁷ Electronic communication from Parent dated February 7, 2014; Fourth Prehearing Order dated February 7, 2014.

⁸ Fourth Prehearing Order dated February 7, 2014.

Based upon these Findings of Fact and upon the authority of applicable law, the Chief Administrative Law Judge issues the following:

CONCLUSIONS OF LAW

1. Within 15 days of the filing of a due process complaint, the IDEA mandates that a school district provide a resolution session, defined as a meeting at which the “parents of the child [are afforded the opportunity to] discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint[.]”⁹

2. Though the Student is authorized by law to attend any meeting of [STUDENT’S] IEP Team,¹⁰ the IDEA does not require that the Student specifically be invited to attend a resolution session.¹¹

3. The IDEA does specify that certain individuals attend the resolution session: (1) “a representative of the public agency who has decision-making authority on behalf of that agency”;¹² and (2) “the relevant member of members of the IEP Team who have specific knowledge of the facts identified in the due process complaint,”¹³ who shall be identified in the following manner: “[t]he parent and the [school district] determine the relevant members of the IEP Team to attend the meeting.”¹⁴

4. The School District complied with applicable law when it had present at the resolution session the Director of Special Education, a School District representative with decision-making authority, in addition to the Assistant Principal and the Due Process Compliance Specialist, both members of the Student’s IEP Team.¹⁵

5. The School District did not violate applicable law when it jointly noticed the conciliation conference and the resolution session. The notice specifically included references to both meetings in a manner sufficient to communicate to a reasonable person that both purposes would be addressed.

6. The Parent clearly understood that the resolution session would take place on January 29, 2014 at 3:00 p.m. but chose not to attend by not answering the several phone calls placed to her telephone number at the appropriate date and time.

7. Because the Parent failed to participate in the resolution session after the School District had made reasonable attempts to allow her do so, the School District is entitled to dismissal of the Parent’s due process complaint.¹⁶

⁹ 20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(1).

¹⁰ 34 C.F.R. § 300.321(a)(7).

¹¹ 34 C.F.R. § 300.510(a)(1).

¹² 34 C.F.R. § 300.510(a)(1)(i).

¹³ 34 C.F.R. § 300.510(a)(1).

¹⁴ 34 C.F.R. § 300.510(a)(4).

¹⁵ See IEP dated 12/5/2013, attached as part of Exhibit 64 on the School District’s Second Amended Exhibit List filed on February 6, 2014.

¹⁶ 34 C.F.R. § 300.510(b)(4).

8. A separate and legally sufficient basis for the dismissal is found in the Parent's voluntary withdrawal of her due process hearing request made on February 7, 2014 in a clear effort to avoid hearing then scheduled for February 10-11, 2014.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Chief Administrative Law Judge makes the following:

ORDER

1. The Parent's January 15, 2014 request for a due process hearing on the issues identified in Finding No. 5 above is **DISMISSED** with prejudice.

Dated: March 12, 2014

s/Tammy L. Pust
TAMMY L. PUST
Chief Administrative Law Judge