

BEFORE THE DUE PROCESS HEARING OFFICER
IN THE MATTER OF
THE DUE PROCESS HEARING FOR)
NOT NAMED

Case No. 18DP____-001

UNIFIED SCHOOL DISTRICT NO. ____)
JOHNSON COUNTY, STATE OF,)
KANSAS

ORDER OF DUE PROCESS HEARING OFFICER

The above numbered case comes before the Hearing Officer based on the following.

1. Notice of Parent's Request for Special Education Due Process Hearing, mailed 10-25-15 received Saturday 10-28-15, and opened 10-30-15 by the District. (see email from DC to Hearing Officer 11-08-17 9:39 am, hereafter HO 1)
2. 11-01-15 email to parent acknowledging receipt and listing two potential Hearing Officers. (HO 1)
3. 11-01-17 email from parent to EF indicating receipt of and suggesting a different Notice was in fact delivered 10-23-15 at roughly 2:15 pm. (HO 1)
4. 11-07-17 Hearing Officer was selected based on parent not rejecting or selecting either Hearing Officer on list in #2. (see email from DC to Hearing Officer 11-07-17 9:39 am, hereafter HO 2)
5. 11-07-17 response to Due Process Complaint on behalf of the respondent. (see email from AR to Hearing Officer 11-07-17 4:01 pm, hereafter HO 3)
6. 11-08-17 email to parties requesting suggestions on time and date for Due Process Hearing. (see email from Lloyd Swartz to parties 11-08-17 12:51 pm, hereafter HO 4)
7. Notice of Insufficiency of Due Process Complaint and Motion to Dismiss as well as Amended Response to Due Process Complaint. (see email from DC to Hearing Officer 11-19-17 5:24 pm hereafter HO 5)
8. Copy of alleged email and other notice set forth in #3 above. (see email from parent to Hearing Officer 11-13-17 1 : 19 pm hereafter HO 6)

72-972a. Due process hearing, initiation of; complaint notice; response to notice. (a) (1) Subject to the requirements in this section, the parent of an exceptional child or the agency responsible for providing services to the child may initiate a due process hearing regarding any problem arising in regard to any matter governed by this act, if:

(A) The problem about which complaint is made occurred not more than two years before the filing of the complaint and the party filing the complaint knew or should have known about the alleged action that forms the basis of the complaint;

(B) the party filing the complaint or the attorney for that party provides to the other party and to the department, a written due process complaint notice that shall remain confidential and include the following information:

(i) The name of the child, the address of the residence of the child (or in the case of a homeless child or youth, available contact information for the child), and the name of the school the child is attending;

(ii) a description of the nature of the problem and the facts that form the basis of the complaint; and

(iii) a proposed resolution of the problem.

(2) A parent or an agency shall not be entitled to a due process hearing until the parent or agency, or their attorney, files a notice that meets the requirements of this subsection.

(b) (1) Any due process complaint notice filed by a parent shall be deemed to be timely even if presented more than two years after the occurrence of the facts giving rise to the complaint, if:

(A) The agency made specific misrepresentations that it had resolved the problem forming the basis of the complaint; or

(B) the agency withheld information from the parent that is required to be given to the parent under this act.

(2) The due process complaint notice required by subsection (a) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, within 15 days of receiving the complaint, that the receiving party believes the notice does not meet the requirements.

(3) Within five days of receipt of the notification provided under subsection (a), the hearing officer shall make a determination of whether the notification meets the requirements of subsection (b)(2) and shall immediately notify the parties, in writing, of such determination.

In the above-captioned case application of KSA 72-972a we must take into account the language and intent of the statute. With the parent allowed up to 6 days to accept or reject a Hearing Officer and the appointment of the hearing officer not occurring till 11-07-17, it would have been impossible to give notice to the hearing officer within 15 days of the alleged email 10-23-17 that is claimed as the parent as the proper notice date. If we use the 10-30-17 date when the district received the mailed letter, the notice of insufficiency was in fact filed within the required 15 days on 11-09-17.

I was unsure until receipt of the HO 6 if there might be a different Request in the email than the one in the mail. They are the same, see HO 1 and HO 6.

Thus, the parent has failed to meet the requirements to have a Due Process Hearing by failing to provide the name of the child, the address of the residence of the child, and the name of the school the child is attending.

I am not making any conclusions on the merits of the request or the allegations contained therein. I also am not making any conclusions on the issue of timeliness for filing a request for due process.

I therefore find as a matter of law that the Notice of Parent's Request for Special Education Due Process Hearing fails to meet the requirements of KSA 72-972a and therefore the parent is not entitled to a due process hearing.

THE ABOVE CAPTIONED AND NUMBERED CASE IS DISMISSED.

~~IT IS SO ORDERED:~~



Lloyd C. Swartz, Due Process Hearing Officer

November 14, 2017

Served electronically:

Parent

Attorney for Parent

Attorney for District

Mark Ward

And by registered mail:

Parent

Attorney for District
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Lloyd C. Swartz

11-14-2017