

Judson W. Tolman

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Hearing Officer

BEFORE THE OFFICER FOR THE
IDAHO DEPARTMENT OF EDUCATION

██████ and ██████ as legal guardians and parents)	Case No. H-19-06-06a
of ██████ a minor,)	
)	
Petitioner,)	
)	MEMORANDUM DECISION
vs.)	
)	
COEUR D'ALENE SCHOOL DISTRICT)	
No. 271,)	
)	
Respondent.)	
_____)	

INTRODUCTION

The Due Process Hearing Request (“Complaint”) in this matter was submitted by Petitioner to the State Department of Education (“SDE”) on June 6, 2019, for Petitioner’s child ██████ (“Student”). On the same date, Petitioner submitted a “Motion To Enforce ██████’s Right To Graduate”. Petitioner identified this Motion as “Emergency in Nature” because the graduation ceremony was scheduled for June 8, 2019. A telephone conference call on Petitioner’s Motion was held on June 7, 2019. Both Petitioner’s, ██████ and ██████, Respondent’s Special Education Director ██████████ and the hearing officer participated in the call. An “Order On Motion To Participate In Graduation Ceremony” was issued on June 7, 2019.

After conclusion of the resolution period, Petitioner submitted a prehearing motion for access to the Student's educational records, sanctions against Respondent and extension of the due process time period. Respondent submitted a response to Petitioner's motion and an order was issued granting Petitioner's motion for (1) access to records under 20 U.S.C. § 1415(b)(1) and 34 CFR 300.501(a) and (2) extension of the period for resolution of the Complaint under 34 CFR 300.515(c). The time period for completing the due process hearing was extended to October 25, 2019. Petitioner's motion was denied as to the request for sanctions. Pursuant to the order on Petitioner's motion, Petitioner was granted access to review all the Student's educational records regularly maintained by the school district. Petitioner was also given electronic copies of all such records.

On September 13, 2019, Respondent submitted a MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT ("MOTION"). The initial period for Petitioner to submit a response to the MOTION was set for September 27, 2019. Petitioner requested extension of the time period in which to respond to the MOTION and extension of the period for concluding the due process hearing. This response period was extended to October 3, and then to October 31, 2019. Each of these extensions was granted in response to Petitioner's requests based on Petitioner's asserted health care needs. Petitioner also requested that the due process hearings be scheduled for Mondays as this was the only weekday Petitioner [REDACTED] was available to attend.

In an Order dated October 15, 2019, the Petitioner was ordered to submit: 1) a statement from Petitioner [REDACTED]'s physician to support Petitioner's request to extend the due process hearing period on account of Petitioner [REDACTED]'s medical needs, and 2) a statement from Petitioner [REDACTED]'s employer to support Petitioner's request to schedule the due process hearing exclusively on

Mondays because it was the only weekday when Petitioner ██████'s work schedule would allow her to attend. Petitioner did not submit either statement as required by this Order. Petitioner did communicate with the hearing officer that ██████'s work schedule had changed and that ██████ was available to participate in due process hearings on Mondays and Tuesdays. Although Petitioner failed to submit a statement from Petitioner ██████'s physician additional time was granted for Petitioner to respond to the MOTION and for completion of the due process hearing. The due process hearing was scheduled for Monday and Tuesday, January 13-14, 2020, and the due process hearing completion date was extended to January 27, 2020.

Petitioner was given an additional opportunity to submit a response to the MOTION on or before December 13, 2019; however, no response to the MOTION was submitted by Petitioner. An ORDER ON RESPONDENT'S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT ("Summary Judgment Order") was issued on December 15, 2019. The Summary Judgment Order awarded judgment in favor of Respondent and dismissed all but one of the claims raised by Petitioner in the Complaint. Petitioner's remaining claim that survived summary judgment and that was the subject of the due process hearing is whether Respondent failed to provide appropriate prior notice about Extended School Year services ("ESY") for the 2017 Christmas break and the 2018 spring break.

DUE PROCESS HEARING

A Scheduling Order dated December 3, 2019, set forth the due process hearing dates and pre-hearing disclosure dates. Pursuant to this Scheduling Order a list of all exhibits and witnesses were to be disclosed to the opposing party and submitted to the hearing officer on or

before January 6, 2020. Copies of proposed exhibits were to be provided to the opposing party by the same date.

On January 6, 2020, Respondent served upon Petitioner and submitted to the hearing officer Respondent's list of exhibits and witnesses, and copies of all Respondent's proposed exhibits were emailed to Petitioner.

Petitioner did not serve or submit a list of exhibits or witnesses, and copies of Petitioner's proposed exhibits were not provided to Respondent.

On Monday, January 13, 2020, Respondent appeared at the hearing. Neither Petitioner ■■■ or ■■■ appeared for the hearing. At 9:05 a.m., five minutes after the time to begin the hearing, Petitioner ■■■ sent an email to the hearing officer and Respondent's legal counsel indicating that Petitioner ■■■ could not proceed with the due process hearing. The hearing officer with Respondent's legal counsel called Petitioner. On the call Petitioner ■■■ stated that he was having health issues and could not attend the hearing. When the hearing officer asked if Petitioner ■■■ would be coming to participate in the hearing Petitioner ■■■ disconnected the phone call.

BURDEN OF PROOF

“The burden of proof in an administration hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). Commenting on *Schaffer*, the Ninth Circuit stated: “[T]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims, ... [a]bsent some reason to believe that Congress intended otherwise, ... we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief.” *Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811, 820 (9th Cir. 2007).

Applying Schaffer, and the Ninth Circuit opinion in Van Duyn, Petitioner bears the burden of proof on the issue for determination in this matter.

FINDINGS OF FACT

1. Petitioner did not disclose exhibits pursuant to the Scheduling Order and Petitioner failed to submit any exhibits in support of Petitioner's claim.
2. Petitioner did not disclose witnesses pursuant to the Scheduling Order and Petitioner failed to produce any witness testimony in support of Petitioner's claim.
3. Neither Petitioner █████ nor Petitioner █████ appeared at the due process hearing and no evidence was put forth in support of Petitioner's claim.

CONCLUSIONS OF LAW

Petitioner, as the party seeking relief, has the burden to prove Petitioner's claim that Respondent failed to provide notice of ESY available for the 2017 Christmas break and the 2018 spring break. No exhibit evidence or witness testimony was disclosed by Petitioner as required by the Scheduling Order and Petitioner did not appear at the due process hearing to present evidence. Petitioner presented no evidence in support of its claim and therefore failed to meet Petitioner's burden of proof.

CONCLUSION

The Complaint stated six claims against Respondent. Petitioner's first claim requesting that the Student be allowed to participate in the graduation ceremony was denied by an Order dated June 7, 2019. Four of Petitioner's claims were dismissed in the Summary Judgment Order. Petitioner's remaining claim was set for hearing on January 13, 2020. Petitioner did not

NOTICE

Any party aggrieved by the findings and decision herein has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under 20 U.S.C. §1415(i)(1). The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. (See 20 U.S.C. §1415(1)(2)). 20 U.S.C. §1415(i)(2)(a) provides that: Time limitation: The party bringing the action shall have 90 days from the date of this decision to file a civil action, **or if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by State law. (Emphasis Added).** IDAPA 08.02.03.109.05(g) provides that “An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer’s decision.”

CERTIFICATE OF SERVICE

I DO HEREBY certify that on the 27th day of January, 2020, I caused to be served on the following a true and correct copy of the foregoing document by the method indicated below:

Chris Hansen
ANDERSON, JULIAN & HULL, LLP
[REDACTED]
[REDACTED]
[REDACTED]
chansen@ajhlaw.com

- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile
- Email

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile
- Email

Dispute Resolution Coordinator
Idaho State Department of Education
650 W. State Street
Boise, ID 83702
jbrandt@sde.idaho.gov

- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile
- Email

By: _____/s/_____
Hearing Officer