

COMMONWEALTH OF VIRGINIA
DUE PROCESS HEARING



Complainants

v.

Respondents

STATEMENT OF FACTS

On _____, Complainant,

, now

, filed a

complaint with Respondent on behalf of the said Department, named parents and students, and the broad class of moderately mentally retarded students in the _____ Public Schools (PS). The complaint presented a number of issues for investigation and decision by Respondent including:

- a. That PS made predetermined placement of students;
- b. That PS made categorical placement of students in violation of the Individuals with Disabilities Education Act (IDEA);
- c. That placement was other than the Least Restrictive Environment;
- d. That PS required students to "earn their way out" of restrictive settings.

See Complainant's Exhibit 4.

The Respondents undertook an investigation of the complaint and on _____, it entered four separate decisions on the individual complaints and a separate

decision on the class complaint - all adverse to the position.

ISSUES

, by this due process proceeding seeks to overturn the informal decisions entered by the and to require to further investigate the complaints filed with it.

takes the position that a due process hearing is inappropriate for an appeal from decisions rendered under CRP; and that class action suits are not available under IDEA.

LEGAL ANALYSIS

It is from those adverse decisions that initiated a due process proceeding on behalf of the named children and the class of non-named moderately mentally retarded children attending school within the PS system.

It is Respondent's position that a hearing officer does not have authority to hear an appeal from adverse decisions rendered under the "Complaint Resolution Procedure" (CRP) in that bringing such a matter to due process is inconsistent with IDEA and the requirements of law. The CRP was established pursuant to 34 CFR 300.512 and VAC 20-80-78. The procedures are set forth in the Regulations Governing Special Education Programs for Children with Disabilities and provide, in part, that there is a right of appeal of the final decision of the . The

CRP is designed as an informal method for parents to register complaints with the for the investigation and issuance of findings regarding violations of the rights of parents or children with disabilities. The complaint may be filed

by any individual, organization, or an individual from another state

Contrasting Due Process with CRP, under due process an administrative procedure is conducted by an impartial hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a parent and a local educational agency. (34 CFR 300.507 (a)).

At the very beginning of this proceeding counsel for the Respondent raised an objection to the proceeding by moving to dismiss on the basis that a proceeding in due process is inappropriate for an appeal from CRP decisions. At that time, I overruled the objection, but agreed to take the motion under advisement.

Now that the hearing has been concluded, briefs filed, and further research of the issue made, I am of the opinion that the motion to dismiss should be granted. I find nothing in the statutes, the regulations, or on-point case law that provides a hearing officer with the authority to hear and to grant relief on an appeal from CRP decisions. Further, I am of the opinion that prior orders entered herein by this hearing officer in contravention of my stated present opinion were improvidently granted. I am unconvinced that a hearing officer has appellate jurisdiction of CRP decisions.

The Regulations clearly provide for appeals of CRP decisions (VAC 20-80-788 G).. had the right of appeal of the adverse decisions entered, were offered same, and chose not to. (Testimony of TR-2, 183-185).

While it is my decision that has no right to carry this case forward under due process, some observations on the testimony and exhibits entered appear to be in

order.

Three of the parents of the children involved in the complaint appeared and testified in this hearing. All three, upon cross examination, stated that they had signed the various IEP's and were aware of their due process rights. (, of (TR-1, 63,64, 67, 68); , of (TR-2, 141,142); , of (TR-3. 42, 43). However, for their own reasons none of the parents filed for a due process hearing. This is, perhaps, to be regretted as they would have appeared before an impartial hearing officer and, depending upon the evidence, may have gained relief sought.

DECISION

1. A hearing officer does not have authority to hear and decide appeals from CRP decisions;
2. Class action suits are not available under the Individuals with Disabilities Education Act . (IDEA).
3. Due Process is separate and distinct from the Complaint Resolution Process.

Date:

Enter:

Hearing Officer

Either party has the right to appeal this decision to a state court or to a federal district court within one year of the date of this decision.