

**DELAWARE DEPARTMENT OF EDUCATION
SPECIAL EDUCATION DUE PROCESS HEARING PANEL**

In The Matter Of:)	
)	
K.P.)	
)	DP 07-09
Petitioner,)	
)	
v.)	
)	
RED CLAY CONSOLIDATED SCHOOL)	
DISTRICT)	
)	
Respondent.)	

DECISION AND ORDER

Hearing dates: N/A

Parent of Petitioner: xxx

Counsel for District: **James Sullivan, Esquire**
Buchanan, Ingersoll & Rooney
Brandywine Building
1000 West Street, Suite 1410
Wilmington, DE 19801

The Decision and Order refers to the parties, witnesses and others generically, to protect personally identifiable information. An Index of names is attached for the benefit of the parties. The Index will permit the parties to identify specific witnesses and other persons and pertinent references. The Index is designed to be detached before this Decision and Order is released as a public record.

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Due Process Hearing Panel for B.S. consisted of the following individuals:

- (a) Noel C. Burnham, Esquire, Panel Chair;
- (b) Dr. William P. McGlumphy, Panel Member; and
- (c) Connie Williams, Panel Member

The original Request for due Process Hearing (“Request”) was filed by KP with the Delaware Department of Education (“DDOE”) on or about September 12, 2006.

On or about November 2, 2006, the Red Clay Consolidated School District (“LEA”) filed and served its Motion To Dismiss (“Motion”).

On November 3, 2006, Panel Chair set a briefing schedule requiring KP to Answer the LEA’s Motion on or before November 15, 2006. KP has not answered or otherwise responded to the Motion.

STATEMENT OF ISSUES

- 1. Did KP’s Request fail to state a claim for which relief can be granted by the Panel?

FINDINGS OF FACT

- 1. The Request states:

“Principal Norris is refusing to accommodate the needs of [student], thus denying [student] an education. --- Environmental change-I have requested a simple change of classroom several times and principal Norris refuses, although it is in the best interest of [student].”

2. The request does not state (1) a description of the child's problem relating to the proposed or refused initiation or change, including facts related to the problem, (2) a proposed resolution of the problem to the extent known and available to the party at the time of the Hearing, (3) the disability that gives rise to the problem and proposed resolution, (4) facts alleging why the failure to change classroom would result in the denial of Fair and Appropriate Public Education, (5) facts alleging that the classroom is not accessible or is otherwise detrimental to KP's education based on his disability, (4) facts alleging that personnel selected by the LEA to carry out the education of KP are not qualified , and (5) facts that set out the environment that is causing KP not to receive an education.

DECISION

On the sole issue of LEA's request for dismissal for failure to state a claim upon which relief can be granted in that the selection of accessible classroom location and/or selection of qualified educational personnel is within the discretion of the LEA, the Motion is **GRANTED, without prejudice.**

[signed in duplicate counterparts].

Dated: __11-20-2006_____

_____/s/ Noel C. Burnham_____
Panel Chair

_____/s/ William P. McGlumphy_____
Panel Member

_____/s/ Connie Williams_____
Panel Member