

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

In the Matter of)
Student)
by Father ,)
)
Petitioner,)
)
v)
New Castle Count VoTech)
School District (“District”))

FINAL ORDER

PreHearing Teleconference Dates: 5/6/05,
5/20/05 and 6/22/05
Date of Order: 7/8/05
DE DP 05-22

Parent(s): “Father, Mother, Student (“xxxxxxx”, Delaware New Castle County.
Counsel for District: Jane Brown, Esq., and Daniel Wendt, Esq.,

FINAL ORDER

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. Any resemblance between the names set forth herein and individuals is merely coincidental as the surnames were fictitiously created to protect the identities of the witnesses and parties.

Having not received from any party or Panel Member a request for reconsideration of the June 22, 2005 Order (“June 22, Order”), and each Panel Member indicated no opposition, **that Order becomes final.** The attached is a redaction to protect private information, to update concerning matters since the June 22, 2005 Order and to perhaps make certain. nonsubstantive grammatical changes. All references to Exhibits are Exhibits attached to the June 22, 2005 Order which are incorporated herein by reference, but **which are not attached** to protect privacy and for the sake of brevity.

As a preliminary matter, present at the 6/22/05 teleconference, besides the Court Reporter, were District by Counsel, Jane Brown, Esq., and the Panel Chair, Gary R. Spritz, Esq. Neither Father, Mother nor Student participated despite numerous notices of the undersigned as described below.

This is not the first teleconference which the Bonds failed to attend. They similarly failed to attend the teleconference dated 5/20/05. At that teleconference, besides the Court Reporter, only the District, through Daniel Wendt, Esq. attended. The same day of the first teleconference the Bonds missed on 5/20/05. the undersigned received the e-mail attached as Exhibit “1” wherein the Bond’s indicated that they would not attend the 5/20/05 conference and complained that Deputy Attorney General Carl Fan had e-mailed an Answer to Motion to Add Plaintiff to the undersigned alone. Until that time, I had not noticed Mr. Fan’s omission and accordingly I never bothered to review his submission¹ On 5/20/05, the undersigned (as soon as he could) responded that the teleconference was still on. Exhibit “3”. The June 22, 2005 teleconference at 2:30 p.m. was first noticed to Father Mother and Student via the Prehearing Order of May 9, 2005 (attached as Exhibit “4”) following the May 6, 2005 Prehearing Conference. This Prehearing Order was sent both by e-mail May 9, 2005 and regular mail, May 10, 2005. Second, the June 22, 2005 teleconference was renoticed on June 20, 2005 with the letter and Attachments set forth as Exhibit “5”.

The Bonds faxed on Friday, June 17, 2005 at 4:39 p.m. an email expressing that they felt there was bias and they were in effect bypassing this administrative hearing as it was futile. Exhibit “6”. It should be noted that this was the same date the parties were to submit to each other their proposed exhibits. The District submitted theirs and to date none have been received from the Bonds. To save the possibility of prejudice, upon his return from vacation on Monday June 20, 2005, and to spare the Bonds the possibility of prejudice, the undersigned replied to Bonds in Exhibit “ 5” again notifying them of the teleconference and inviting them to attend to discuss their

¹ In the letters and orders I have indicated that e-mail alone was not satisfactory as a signed, dated version had to be submitted by mail. The reason for this is to avoid mishaps that occur with e-mails such as this one. This mailing requirement was first indicated in the opening letter setting the pretrial conference of 5/2/05. It is presumed that Mr. Fan simply made a clerical type of mistake. Ultimately, this mistake had no relevance as I ruled on the Motion without any input from Mr. Fan and sent all parties the basis for this decision in writing on 5/20/05 in Exhibit “ 2 “.

matters. The Bonds received this as acknowledged by the e-mail attached as Exhibit "7"². The undersigned responded to this E-mail in Exhibit "8".

At the teleconference of June 22, 2005, I waited until 2:40 p.m. for the Bonds to attend. They did not. Further, since June 22, 2005, neither the Bonds nor Father requested reconsideration and each of the other Panel Members has indicated that they are not opposed to the dismissal. Accordingly, I am dismissing the April 27, 2005 request by Father for a Due Process Hearing for a lack of prosecution, cancelled the Hearings formerly scheduled for June 27, 2005 and June 28, 2005 and will not reschedule them. **This Order is final.**

Respectfully,

7/8/05
Date

GARY R. SPRITZ

Sent First Class Mail and Certified Mail to Parties and First Class Mail to Panel Members.

² Normally, the Department of Education sends the transcripts to the respective parties and it appears that the transcript of the first hearing was sent. However, I sent the transcript of the 5/20/05 teleconference as soon as I received it 6/24/05 certified and regular mail with plenty of time for the Bonds to request reconsideration if they desired. I sent the first transcript even though the Department of Education 5/13/05 letter indicated that it had been previously mailed on 6/20/05 Express Mail and Certified Mail in the event there was some problem with the Department of Education's mailing which I am not aware of. These measures were taken to cure any additional problem such as mishaps with the mail and to ensure no misunderstandings are created from such mishaps