

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF     )     **FINAL ORDER OF DISMISSAL**  
  )     )  
Student and Portland Public School District     )     Case No. DP 13-112  
  )     )

**FINDINGS OF FACT**

(1) On July 31, 2013, Parent filed a request for a due process hearing on behalf of Parent and Student, with the State Superintendent of Public Instruction, alleging that the District had failed to provide a free and appropriate education for Student as required under the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), 20 USC §§ 1400 *et seq.* The parties, having made a joint request to go to mediation, waived the resolution sessions. Therefore, the resolution period ended with no resolution session having been held

(2) The matter was referred to the Office of Administrative Hearings (OAH) on July 31, 2013, to be set for hearing and was assigned to Senior Administrative Law Judge (ALJ) A. Bernadette House. The parties held a mediation session on August 26, 2013 but did not resolve the matter. At that time, the parties had agreed to attend a second mediation session. ALJ House convened a pre-hearing teleconference on August 30, 2013. Parent appeared *pro se* and represented Parent and Student. Suzy Harris, Attorney at Law, appeared on behalf of District.

(3) During the August 30, 2013 teleconference, Parent withdrew from mediation. Because Parent withdrew from mediation on August 30, 2013, the 45-day deadline to issue a final order started on August 31, 2013. District moved for extension of the 45-day deadline to a date certain based on pre-existing conflicts for counsel. Parent opposed the extension. ALJ House set a second teleconference to allow the parties to prepare and present arguments regarding District's motion and to allow District time to retain alternative counsel should the motion be denied. The parties submitted written arguments prior to the second teleconference held on September 4, 2013.

(4) At the September 4, 2013 teleconference, ALJ House heard argument from the parties on District's Motion. After considering the written and oral arguments, ALJ House denied District's Motion to Extend the 45-Day Deadline to a Date Certain on the record. The hearing was set for September 23-25, 2013; Final Order due on or before October 14, 2013. District retained Graham Hicks, Attorney at Law, to represent District. ALJ House and the parties reviewed the issues for hearing to be included in the Notice of Hearing. Agreement was reached on restatement of the issues from Parent's hearing request to include the relevant provisions of IDEA laws and rules. The parties also agreed that some of the issues raised in the July 31, 2013 hearing request had been resolved and could be removed from the hearing notice. Deadlines for submission of evidence and other matters were set. A third teleconference was set for September 10, 2013 to address remaining issues on hearing location and to address other issues as needed.

(5) On September 9, 2013, ALJ House issued the Notice of Hearing, including the issues for hearing and the issues which had been resolved as agreed upon on September 4, 2013. On September 10, 2013, ALJ House convened a third prehearing teleconference. Parent and Mr. Hicks were present. Parent withdrew Parent's previous agreement that any of the issues raised in the hearing request had been resolved. The parties reviewed all issues and agreed upon the issues to be addressed at hearing relevant to the related provisions of the IDEA. Parent requested to reschedule the hearing, without waiving the 45-day deadline, to allow additional time for preparation. Parent's request, opposed by District, was denied on the record. Filing methods were modified to allow service of hearing documents to ALJ House as of the date of mailing while retaining the service requirement that documents must be received by the opposing party on or before the previously set deadline.

(6) On September 19, 2013, Parent informed OAH that the parties had reached agreement on all issues raised in the hearing request. However, the agreement had not yet been signed by the parties. ALJ House requested that the parties confirm that Parent was requesting withdrawal of July 31, 2013 request for due process with the understanding that the Final Order of Dismissal would be issued with Prejudice and that the matter would be closed. On September 20, 2013, (by e-mail received at 5:03 p.m. September 19, 2013) Parent confirmed to the OAH that the parties had reached an agreement on all issues raised in the July 31, 2013 request for a due process hearing. Parent therefore requested that the request for due process hearing be dismissed.

(7) Accordingly, based on Parent's request and representation that the parties have settled by agreement the issues raised in the July 31, 2013 due process hearing request, a contested case proceeding is no longer required.

### **ORDER**

The hearing request of July 31, 2013, regarding issues raised by Parent and Student against Portland Public School District, having been withdrawn, is **DISMISSED** with prejudice. The hearing currently set for September 23-25, 2013 is cancelled and will be removed from the calendar.

A. Bernadette House  
Senior Administrative Law Judge  
Office of Administrative Hearings

## **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

**ENTERED** at Salem, Oregon September 20, 2013 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing FINAL ORDER of DISMISSAL in Case No. DP 13-112 on the foregoing parties on the 20th day of September 2013 by depositing a copy of said document in a sealed envelope in the United States Mail at Salem, Oregon, with the postage thereon fully prepaid, and addressed to:

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Carol Buntjer  
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