

STATE OF SOUTH CAROLINA	)	
	)	LOCAL DUE PROCESS HEARING
COUNTY OF LANCASTER	)	
K.M. and M.S. On behalf of S.S.	)	
Petitioners	)	
	)	
vs	)	ORDER GRANTING MOTION TO DISMISS
	)	
LANCASTER COUNTY SCHOOL	)	
DISTRICT	)	
Respondent	)	

This matter is before this Hearing Officer pursuant to a Due Process Hearing Request (DPHR) submitted by the Petitioners on January 3, 2024. A letter was sent to the Petitioners on January 11, 2024, explaining their rights and responsibilities during a Due Process Hearing. The Respondent submitted its response on January 12, 2024, and as part of said response sought in whole or in part the Dismissal of said DPHR based on the fact that many of the allegations made were resolved in a previous DPHR that ended by agreement "with prejudice" and that the Petitioners were not entitled to the relief they sought. The Petitioners were then given until January 19, 2024 to respond to the District's Motion to Dismiss The Petitioners responded by the appropriate date. In the meantime, a Resolution Session was held on January 17, 2024, which did not yield a settlement.

In January 2023 the Petitioners filed a DPHR against the Respondent. That matter was resolved by a Resolution Agreement which was executed and delivered to both parties. The Agreement dismissed the DPHR by an order dated February 22, 2023, "with prejudice". That dismissal ended the dispute of the matters raised in the DPHR which occurred prior to that date. It was not appealed or objected to in any way, thus it became final and the matters raised in that DPHR were dismissed and could not be raised again.

In May of 2023, the Petitioners filed another DPHR alleging a number of the same issues raised in the earlier DPHR supported by the same facts. In addition, there are allegations relating to matters that occurred after February 22, 2023.

Those matters raised in the January 2023 DPHR were resolved by the Resolution Agreement and Order dated February 22, 2023, and are covered by the rule of law known as *Res Judicata*. This doctrine provides that claims which have been litigated or could have been litigated and thus could not be litigated again as explained in *Grausz v. Englander*, 321 F.3rd 467,472 (4th Cir. 2003). The principal has been applied to IDEA cases in *Capuano v. Fairfax Cnty Pub. Bd*, No. 1:13-cv-00568- GBL-TRJ, 2013 U.S. Dist. LEXIS 155750, at *11-13 (E.D. Va. Oct. 29, 2013).

The issues raised by the Petitioners in the May 2023 DPHR were repetitive and many of the allegations of the IDEA violations after the previous Order appear to be a continuation of the same issues raised in the first case and rely on the same facts. As a result, the May 2023 DPHR was dismissed in part with the Petitioners given leave to amend their DPHR regarding issues raised which might be proper for litigation. They choose not to do so, and the matter was again dismissed "with Prejudice". Therefore, the issues raised in the second DPHR not covered by the first case were decided in the second case.

Now in January 3, 2024, the Petitioners have again filed a DPHR alleging substantially the same issues. The Respondents have again filled a Motion to Dismiss based on *Res Judicata*. The Petitioners were given an opportunity to respond, and they did so in a timely fashion. However, the response did not address the legal issue. Instead, the Petitioners relied on over 200 pages of documentary evidence supporting the issues already dismissed in previous DPHR requests. The Petitioners either do not understand or choose not to understand the doctrine of *Res Judicata*. which in plain language says that once an issue is dismissed with prejudice and not appealed, it is decided and cannot be litigated again. In this case the issues have been dismissed twice "with prejudice" and cannot be litigated again.

The Petitioners do raise two new issues. 1) should the Respondent be required to pay tuition for private school and 2) can the Respondent be required to pay attorney's fees.

Regarding the private school tuition issue, the Respondent alleges first that the Petitioners have failed to give proper notice that they intend to unilaterally remove their child from the Respondent school district; second that the child won't begin attendance at the private school until the coming fall thus the request for payment of private school tuition is clearly premature; and third, the Petitioners have failed to meet the requirements set forth in the United States Supreme Court Case of *Carter v. Florence School District 4*, 510 U.S. 7, which is required to obtain a favorable ruling regarding payment of tuition. I agree with each argument.

With regard to the Petitioners' request for the payment of attorney's fees, even though they are not represented by legal counsel, the law forbids a Local Hearing Officer (in this case me) from awarding attorney's fees. Such an award can only be made by the Federal Court. For the Court to award said fees it must be found that the person seeking the award was the prevailing party in the case and the matter is properly before the Court. In this case, the matter has not been appealed to Federal Court and the Petitioners have not prevailed in the case.

In previous Orders and pleadings, case law and IDEA Regulations have been cited regarding the issue of *Res Judicata*. There is no need to repeat those citations here. This case is not at the hearing stage and it is not appropriate to consider all the factual information submitted by the Petitioners, particularly since the vast majority of it is supporting matters were already decided, are more than 2 years old, and prohibited by IDEA Regulations and Law. Similarly, considering factual information submitted by the Respondent District, should a ruling be made moving this case to a Hearing, would be improper at this point. Only evidence properly submitted at a hearing can be considered to render a decision on the facts.

This is a decision regarding a Motion to Dismiss requested by the Respondent District. We are not trying the facts of the case here. The Petitioners' DPHR is therefore dismissed as a matter of law. The Petitioners' attempt to relitigate issues already decided "with prejudice" fails; the award of private school tuition is not appropriate in this case; and an award of attorney's fees is not within

my power.

THEREFORE, IT JS HEREBY ORDERED that the Respondent's Motion to Dismiss is granted and this matter is dismissed with prejudice.

IT IS SO ORDERED

Greenville, South Carolina
January 30, 2024



Douglas R. Dent, Local IDEA Hearing Officer

APPEAL

Should either party wish to appeal this Order, they must contact the South Carolina Department of Education, Office of General Counsel, 1429 Senate Street, Columbia, South Carolina 29201, (803) 734-3393 within ten (10) days of receipt of this Order.