

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-340

Complainant:	No. 1034110798A
Judge:	No. 1034110798B

ORDER

The complainant alleged an administrative law judge with the Arizona Office of Administrative Hearings engaged in judicial misconduct in connecting with a special education hearing involving her child. Since the commission has no jurisdiction over executive department administrative law judges, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: January 16, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on January 16, 2013.

This order may not be used as a basis for disqualification of a judge.

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I wish to file a complaint against administrative law judge Eric A Bryant. Judge Bryant was appointed to be a special education hearing officer in a due process hearing for my disabled child, under IDEA regulations. I have a consolidated docket identified as 12C-45-DP-ADE

Hearing Officer Bryant was very harsh and unfair to me. He held my pleadings to a standard higher than required in a Federal court, but refused to apply IDEA regulations to the Opposing side in the dispute (the school district)

I made repeated motions for compliance with IDEA Procedural Safeguards preexisting regulatory requirements Regarding due process hearings. Specifically- the IDEA regulation requiring A response from the noncomplaining party (the school district) within 10 days.

Regulation :

If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the LEA shall, within 10 days of receiving the request for a due process hearing, send to the parent a response that shall include:

- *An explanation of why the agency proposed or refused to take the action raised in the complaint;*
- *A description of other options that the individualized education program (IEP) team considered and the reasons why those options were rejected;*
- *A description of each evaluation procedure, assessment, record or report the agency used as the basis for the proposed or refused action; and*
- *A description of the factors that are relevant to the agency's proposal or refusal.*

[615(c)(2)(B)(i)(I)]

A response filed by an LEA pursuant to Section 615(c)(2)(B)(i)(I) shall not be construed to preclude such LEA from asserting that the parent's due process request was insufficient where appropriate. [615(c)(2)(B)(i)(II)]

Except as provided in Section 615(c)(2)(B)(i), the noncomplaining party shall, within 10 days of receiving the notice of request for a due process hearing, send to the other party a response that specifically addresses the issues raised in the request. [615(c)(2)(B)(ii)]

Judge Bryant has forced me to move forward with pre conference and disclosure without benefit Of the response from the opposing party as required by IDEA.

I filed 2 requests for production, and 4 motions to compel a response but the hearing officer Refuses to acknowledge my filing and will NOT conduct the hearing as per IDEA Procedural Safeguards preexisting regulatory requirements regarding due process hearings. The hearing officer is being most unfair and is violating

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

1. To ensure impartiality and fairness to all parties, a judge must be objective and openminded.
2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.
3. A good faith error of fact or law does not violate this rule. However, a pattern of legal

error or an intentional disregard of the law may constitute misconduct.

4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

RULE 2.3. Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

1. A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

I am filing a motion to disqualify based on the bias in refusing to follow IDEA regulations

I hope the judge disqualifies himself as he has refused to apply IDEA regulations to the opposing Party in our dispute which is bias

RULE 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding

NOT APPLYING THE IDEA Procedural Safeguards preexisting regulatory requirements Regarding due process hearings. Specifically- the IDEA regulation requiring A response from the noncomplaining party IS VERY UNFAIR – THE HEARING OFFICER HAS ALLOWED THE NONCOMPLIANCE TO GO ON FOR MONTHS. Hearing officer Bryant has allowed the school district to "phone in" response to due process Complaints months after the timeline passed, the hearing officer dismissed part of my complaint On Dec 7, 2012 bases on a verbal (and false) claim made by the school district that my complaint was not timely, such a response according to IDEA was to have been provided to me in writing within 10 days of my complaint (file July 2012) instead the hearing officer lets the school district wait 5 months and literally Phone in a response due a pre hearing conference. The hearing officer has allowed disclosure deadlines (I even made disclosure) without benefit of the response from the opposing party as required within 10 days of my filing.

This is just so unfair. IDEA Procedural Safeguards preexisting regulatory requirements

Regarding due process hearings are in place to keep parents from being treated unfairly-

I am unable to get the hearing officer to follow the regulations regarding the hearing.

I want a fair judge that follows IDEA Procedural Safeguards preexisting regulatory requirements

Regarding due process hearings.

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