

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TRACY DAVENPORT, et al.,

Plaintiffs,

v.

DISTRICT OF COLUMBIA,

Defendant.

Civil Action No. 13-1014
KBJ/DAR

REPORT AND RECOMMENDATION

Plaintiff Tracy Davenport commenced this action against the District of Columbia, in her own right and on behalf of her minor son, A.M., pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*, seeking review of an administrative hearing officer's order dismissing their complaint. Complaint for Declaratory and Injunctive Relief (Document No. 1). This action was referred to the undersigned United States Magistrate Judge for full case management. 08/29/2013 Minute Order.

As the undersigned observed in ruling on Plaintiffs' request to submit additional evidence to this court, the hearing officer in the underlying administrative proceedings granted a motion to dismiss filed by Defendant and dismissed Plaintiffs' due process complaint "prior to the commencement of an administrative hearing." Memorandum Opinion and Order (Document No. 15) at 3-4. Following this court's denial of Plaintiffs' request to submit additional evidence, *id.* at 9, Plaintiffs filed a Motion for Summary Judgment (Document No. 17) challenging the hearing officer's dismissal of their due process complaint. In lieu of filing an opposition, Defendant filed a Response to Plaintiffs' Motion for Summary Judgment (Document No. 18) indicating that it

“does not oppose a remand for a full hearing on the merits of Plaintiffs’ due process complaint.”

The undersigned thus ordered the parties to meet and confer, in an effort to agree upon the terms of the disposition by this court of the pending motion for summary judgment.

07/07/2014 Minute Order. The parties were unable to come to an agreement, and submitted separate proposed orders. With respect to resolution of Plaintiffs’ motion for summary judgment, Defendant represents that it does not concede all of the facts and arguments raised in the motion. Defendant’s Meet and Confer Statement (Document No. 19). However, because Defendant agrees that the hearing officer “misapplied” a legal standard in dismissing Plaintiffs’ due process complaint, it thus “agrees that this matter should be remanded to the Student Hearing Office” *Id.* Plaintiffs contend that their motion “should be conceded” by Defendant because Defendant has agreed to “the exact remedy sought by plaintiffs in their motion.” Plaintiffs’ Meet and Confer Statement (Document No. 20) at 1. In response to Defendant’s contention that it does not concede all of the facts and arguments raised in the motion, Plaintiffs note that Defendant did not file an opposition to Plaintiffs’ motion. *Id.* at 2 n.1. Both Plaintiffs and Defendant, in their respective proposed orders, provide for the dismissal of this action.

Upon consideration of the parties’ submissions, and the record herein, the undersigned **RECOMMENDS** that Plaintiffs’ Motion for Summary Judgment (Document No. 17) be **DENIED WITHOUT PREJUDICE**. Given the parties’ agreement that this matter should be remanded for a hearing officer to consider the merits of Plaintiffs’ due process complaint, the undersigned finds that the court, in the interest of expediting resolution of Plaintiffs’ claims and to conserve judicial resources, need not consider the merits of the arguments presented by Plaintiffs in their motion.

The undersigned **FURTHER RECOMMENDS** that the court remand this matter to the Office of State Superintendent for Education's Student Hearing Office for further proceedings, including a hearing on the merits of Plaintiffs' due process complaint, and that this action be dismissed.

It is, this 7th day of August, 2014,

SO RECOMMENDED.

/s/
DEBORAH A. ROBINSON
United States Magistrate Judge

Within fourteen days, either side may file written objections to this report and recommendation. The objections shall specifically identify the portions of the findings and recommendations to which objection is made and the basis of each such objection. In the absence of timely objections, further review of issues addressed herein may be deemed waived.