

**BEFORE THE HEARING PANEL
EMPOWERED BY THE
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION**

IN THE MATTER OF:

Student/Petitioner

and

ST. LOUIS CITY SCHOOL DISTRICT,

Respondent

DECISION AND ORDER

This matter is pending before the Chairperson of the Hearing Panel on Respondent's Motion that the due process proceeding be dismissed. The following Decision and Order is issued by the Chairperson of the Hearing Panel:

Cover Sheet Information

1. ("Student") is the son of ("Parents"). Student was born on .
2. At all times material to this due process proceeding, the Student has resided with his Parents at , which is located within the boundaries of the St. Louis City School District.
3. The Parents and Student were not represented by Counsel. The St. Louis City School District ("District") was represented by:

Margaret M. Mooney
Lashly & Baer
714 Locust Street
St. Louis, Missouri 63101-1699

4. A Request for Due Process was filed with the Missouri Department of Elementary and Secondary Education ("DESE"), either by the Parents or the Student, on May 3, 2004. A copy of the Request for Due Process is attached as Exhibit 1. The initial deadline for the matter was June 17, 2004. On June 1, 2004, Counsel for the District requested that the time lines in this

case be extended through August 17, 2004. On June 11, 2004, the undersigned Hearing Chairperson sent a letter to the parties which extended the time lines through August 17, 2004.

5. Pertinent Exhibits are attached to this Decision and Order. Because personally identifiable information is contained in these documents, they are not included with the public portion of this Decision and Order. The document which are attached are as follows:

- | | |
|------------|---|
| Exhibit 1 | Request for Due Process, dated May 3, 2004. |
| Exhibit 2 | Letter from Pam Williams to the Parents, dated May 4, 2004. |
| Exhibit 3 | Letter from Pam Williams to the Hearing Panel, dated May 14, 2004. |
| Exhibit 4 | Letter from Hearing Chairperson to parties, dated May 18, 2004. |
| Exhibit 5 | Letter from Hearing Chairperson to Parents, dated May 18, 2004, enclosing copy of <i>Procedural Safeguards for Children and Parents</i> . |
| Exhibit 6 | Motion from District to Dismiss Request for Due Process, dated May 20, 2004. |
| Exhibit 7 | Letter from Hearing Chairperson to Student, dated June 1, 2004, enclosing copy of <i>Procedural Safeguards for Children and Parents</i> . |
| Exhibit 8 | Letter from Counsel for District requesting an extension of the time lines in the case, dated June 1, 2004. |
| Exhibit 9 | Addendum to District's Motion to Dismiss Request for Due Process, dated June 10, 2004. |
| Exhibit 10 | Letter from Hearing Chairperson to parties, dated June 11, 2004, extending the time lines in the case through August 17, 2004. |
| Exhibit 11 | Letter from Counsel for District, dated June 16, 2004. |
| Exhibit 12 | Order to Show Cause Why Due Process Request Should Not Be Dismissed, dated June 16, 2004. |

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IN THE MATTER OF ,

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ST. LOUIS CITY SCHOOL DISTRICT,

Respondent

DECISION AND ORDER

The Chairperson of the Hearing Panel, after receiving two Motions to Dismiss the Request for Due Process filed by the St. Louis City School District and after having issued an Order to Show Cause Why Due Process Request Should Not Be Dismissed, on June 16, 2004, issues the following Decision and Order:

FINDINGS OF FACT

The Chairperson of the Hearing Panel, makes the following Findings of Fact:

I. Parties.

I. The Student and his Parents currently reside in St. Louis, Missouri within the boundaries of the St. Louis City School District (“District”).

II. The District is a Missouri Metropolitan school district organized pursuant to Missouri statutes.

III. The Student and Parents were not represented by counsel at the hearing. The Parents and Student were separately provided with *The Procedural Safeguards for Children and Parents* by the Hearing Chairperson.

IV. The District was represented at the hearing by Margaret M. Mooney, Lashly & Baer, 714 Locust Street, St. Louis, Missouri 63101-1699.

V. The three person panel for the due process proceeding is:

Ransom A. Ellis, III

Hearing Chairperson

Rand Hodgson

Panel Member

Leora Andrews

Panel Member

II. Procedural Background.

VI. On or about May 3, 2004, Student or Parents sent a letter to Missouri Department of Elementary and Secondary Education (“DESE”) requesting a due process hearing. (Exhibit 1) The request for a due process hearing was received by DESE on May 3, 2004.

VII. On or about May 4, 2004, Pam Williams, Director of Special Education Compliance for DESE provided the Parents with a copy of the *Procedural Safeguards for Children and Parents*. (Exhibit 2).

VIII. On or about May 14, 2004, Pam Williams notified the undersigned that he had been assigned as the Chairperson of the three-member due process panel in this case. (Exhibit 3)

IX. On or about May 18, 2004, the Hearing Chairperson notified the Parents and District’s Counsel that a panel had been selected in the case and that the hearing had to be held and a written decision rendered by the panel and mailed to the parties by June 17, 2004. (Exhibit 4).

X. On or about May 18, 2004, the Hearing Chairperson provided the Parents with a copy of the *Procedural Safeguards for Children and Parents*. (Exhibit 5).

XI. On or about May 20, 2004, the District filed *Defendant Board of Education of the City of St. Louis’ Motion To Dismiss Parents’ Complaint For Due Process*. Information contained in this Motion revealed for the first time to DESE and the Hearing Chairperson that the Student was over the age of eighteen (18) years at the time the Request for Due process was filed. In its Motion to Dismiss, the District argued that the Request for Due Process should be dismissed because the Student had turned eighteen (18) years of age and the Parents did not have standing to file the Request for Due Process. The District reasoned that at the time the Student reached the age of majority, all rights under the Individuals With Disabilities Education Act, (“IDEA”) and its regulations transferred to the Student; that the Student had not been determined to be incompetent by a court of competent jurisdiction; and, that no educational surrogate had been appointed for the Student. (Exhibit 6).

XII. On or about June 1, 2004, the Hearing Chairperson wrote a letter to the Student. The letter contained a copy of the *Procedural Safeguards for Children and Parents* and was copied to the Parents. The letter also requested that the Student provide a response to the following questions:

“ 1. Was the Request for Due Process . . . , which was filed with DESE on May 3, 2004, filed by you or was it filed by your parents?

2. Since you turned eighteen on [Student's date of birth], have you been declared incompetent by any court?

3. Since you turned eighteen on [Student's date of birth], have you given consent to any person to act on your behalf as a surrogate and be responsible for matters related to your education?"

(Exhibit 7). No response was received from the Student or Parents.

XIII. On or about June 1, 2004, Counsel for the District requested that the time lines for the due process hearing be extended through August 17, 2004. (Exhibit 8).

XIV. On June 10, 2004, the District filed an Addendum to its Motion to Dismiss. (Exhibit 9). In this Addendum, the District argued that the Request for Due Process should be dismissed because the Student had just graduated from one of the District's High Schools.

XV. On June 11, 2004, the Hearing Chairperson extended the hearing time lines through August 17, 2004. (Exhibit 10).

XVI. On June 16, 2004, the District provided additional information regarding its Addendum to Motion to Dismiss. (Exhibit 11).

XVII. On June 16, 2004, the Hearing Chairperson issued an *Order To Show Cause Why Due Process Request Should Not Be Dismissed*. (Exhibit 12). The Order gave the Student until Friday, July 2, 2004, within which to respond with reasons why the Request for Due Process should not be dismissed. No response was received from the Student (or the Parents) by the Hearing Chairperson.

III. Background Facts.

XVIII. On May 3, 2004, when the Request for Due Process in this case was filed, the Student was over the age of eighteen (18) years. On the date the Student turned eighteen (18), the District notified him that the procedural rights contained in the IDEA transferred to him unless he was declared incompetent by a court of law or appointed the Parents (or someone else) as his guardian. (Exhibit 6).

XIX. The Student has not been declared incompetent by a court of competent jurisdiction nor has a guardian been appointed to represent him in educational matters.

XX. There is insufficient evidence to determine whether the Request for Due Process (Exhibit 1) was filed by the Parents or by the Student.

XXI. On April 16, 2004, the District issued a Notice of Action – Placement to the Student, who was, at that time, over the age of eighteen. The Notice of Action – Placement notified the Student that the District proposed to change his educational placement when he graduated in June, 2004. (Exhibit 11).

XXII. In June, 2004, the Student graduated from one of the District's high schools with a regular education diploma. (Exhibit 9).

CONCLUSIONS OF LAW

The Chairperson of the Hearing Panel makes the following Conclusions of Law:

XXIII. The IDEA, 20 U.S.C. §1400 *et seq.*, its regulations, 34 C.F.R. Parts 300-301 and the *State Plan for Part B of the Individuals With Disabilities Education Act*, ("State Plan") set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the District in providing special education and related services to students with disabilities.

XXIV. The IDEA requires that a disabled child be provided with access to a "free appropriate public education." ("FAPE") *Board of Education of the Hendrick Hudson Central School District, Board Of Education, Westchester County v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 3049, 73 L.Ed.2d 690 (1982). The term "free appropriate public education" is defined by 34 C.F.R. § 300.8 as follows:

"...the term 'free appropriate public education' means special education and related services that--

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include preschool, elementary school, or secondary school education in the State involved; and,
- (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.340--300.350."

A principal component of the definition of FAPE is that the special education and related services provided to the student with a disability, "meet the standards of the SEA" (State Board of Education), and "the requirements of this part". 34 C.F.R. Part 300.

XXV. If parents (or a student over the age of eighteen) believe that the educational program provided for their child fails to meet this standard, they may obtain a state administrative due process hearing. 34 C.F.R. § 300.506; *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 578 (8th Cir. 1998); *Fort Zumwalt School District v. Clynes*, 119 F.3d 607, 610 (8th Cir. 1997), *cert. denied* 523 U.S. 1137, 118 S.Ct. 1840, 140 L.Ed 2d 1090 (1998).

XXVI. The State Plan for Special Education (Regulations Implementing Part B of the IDEA), (2001) states as follows:

"Exceptions to FAPE

Public agencies in Missouri are not required to provide FAPE to the following children and youth:

- A. youth with disabilities who reach the age of 21; or,
- B. students who have graduated from high school with a regular high school diploma. . . . Graduation from high school with a regular education diploma constitutes a change in placement, requiring written prior notice in accordance with 34 C.F.R. § 300.503.”

XXVII. The Notice of Action – Placement, which was issued to the Student on April 16, 2004, notified the Student that the District proposed to change his educational placement when he graduated in June, 2004. (Exhibit 11). This Notice of Action met the requirements set forth in the IDEA Regulations, 34 C.F.R. § 300.503 and in the State Plan.

XXVIII. The claims raised by the Request for Due Process (Exhibit 1), which was filed on May 3, 2004, are moot because the Student has graduated from one of the District’s High Schools with a regular education diploma after having been appropriately notified his graduation would constitute a change in his educational placement and would terminate the responsibility of the District to provide him with FAPE.

DECISION

There are two issues raised by the District’s Motion to Dismiss: (1) the Request was filed by the Student’s parents, and not the Student who was eighteen years of age and competent; and, (2) the Request is moot because the Student has graduated and is no longer a student in the District.

The Request was filed with DESE on May 3, 2004 and simply stated: “No evaluation by School District in 4 years. No transition plan in place.” Both claims fall under the IDEA.

On June 1, 2004, the Hearing Chairperson wrote the Student asking the Student to provide input into the issue of who filed the Request for Due Process. The Student has not responded to the letter or otherwise provided information requested by the Hearing Chairperson.

There is no persuasive evidence as to whether the Student’s Parents or the Student filed the Request. The evidence, at this time, indicates that: (a) the Student is over the age eighteen years, having turned eighteen more than two years prior to filing of the Request for Due Process; (b) on the Student’s eighteenth birthday, the District notified the Student that the procedural and substantive rights under the IDEA passed to him on his eighteenth birthday; (c) since his eighteenth birthday, and to the present, the District has not been notified that the Student has either, been declared incompetent by a court of competent jurisdiction or given consent to his parents to act on his behalf as a surrogate to be responsible for matters related to his education; and (d) an unsigned Request for Due Process was filed with DESE on May 3, 2004.

The second reason for dismissal is, however, different. Specifically, the evidence indicates that on April 16, 2004 the District gave the Student a Notice of Action – Placement which indicated the Student would be graduating. Thereafter, in June 2004 the Student graduated and received a regular education diploma from one of the District’s High Schools, having met the curricular requirements set by the District for graduation.

The Missouri State Plan for Special Education (Regulations Implementing Part B of the IDEA), (2001) states as follows:

“Exceptions to FAPE

Public agencies in Missouri are not required to provide FAPE to the following children and youth:

- A. youth with disabilities who reach the age of 21; or,
- B. students who have graduated from high school with a regular high school diploma. . . . Graduation from high school with a regular education diploma constitutes a change in placement, requiring written prior notice in accordance with 34 C.F.R. 300.503.”

The case law clearly states that once a student graduates, claims based on a school district’s failure to provide FAPE are moot. *Board of Education of Oak Park v. Nathan R.*, 199 F.3d 377, 381 (7th Cir. 2000)(after graduation, “no action this court might take would affect his or the School’s rights.”); *T.S. v. Independent School District No. 54*, 265 F.3d 1090, 1092, (10th Cir. 2001)(any claim that FAPE was deficient becomes moot upon a valid graduation); *Browell v. Lemahieu*, 127 F.Supp.2d 1117, 1126-27 (D. Hawaii 2000)(no effective relief court can grant following graduation); *Department of Education, State of Hawaii v. Rodarte*, 127 F.Supp.2d 1103,1111-12 (D. Hawaii 2000)(no effective relief court can grant following graduation).

While the Eighth Circuit Court of Appeals and Missouri Courts have yet to rule on this precise issue, there is an abundance of precedent from these courts which indicates they would follow the holdings of the Seventh and Tenth Circuits on this issue. *Yankton School District v. Schram*, 93 F.3d 1369, 1376-77 (8th Cir. 1996)(where allowed by state law, transition services under IDEA not required after graduation); *Schanou v. Lancaster County School*, 62 F.3d 1040 (8th Cir. 1995)(Section 1983 claim by parents of child was mooted by child’s graduation from high school); *McFarlin v. Newport Special School District*, 980 F.2d 1208,1210-11 (8th Cir. 1992)(Section 1983 claim by student mooted by graduation); *Steele v. Van Buren Public School District*, 845 F.2d 1492, 1495 (8th Cir. 1988)(Section 1983 claim by student was mooted by her graduation); *Shaw v. Park Hill R-V School District*, 630 S.W.2d 610 (Mo App 1982)(Student’s claim challenging suspension from school mooted by graduation).

The Request for Due Process, and the issued contained therein, are moot as a result of the Student’s graduation from high school with a regular education diploma following proper notification to him that his placement would be changed when he graduated, as required by the IDEA, its Regulations and the State Plan.

ORDER

The Request for Due Process filed May 3, 2004 (Exhibit 1) is dismissed.

APPEAL PROCEDURE

PLEASE TAKE NOTICE that these Findings of Fact, Conclusions of Law, Decision and Order constitute the final decision of the Department of Elementary and Secondary Education in this matter and you have a right to request review of this decision pursuant to the Missouri Administrative Procedures Act, Section 536.010 *et seq.* RSMo. Specifically, Section 536.110 RSMo. provides in pertinent part as follows:

"1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within thirty days after the mailing or delivery of the notice of the agency's final decision....

3. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff or of one of the plaintiff's residence...

PLEASE TAKE NOTICE that you also have a right to file a civil action in Federal or State Court pursuant to the IDEA. See 34 C.F.R. §300.512.

Dated: July 6, 2004

Ransom A Ellis, III
Hearing Chairperson

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon each party to this action, to-wit:

Parents
Ms. Margaret M. Mooney
Lashley & Baer, P.C.
714 Locust Street
St. Louis, MO 63101

Student
Pam Williams
Special Education Legal Services
Department of Elementary and Secondary
Education
Post Office Box 480
Jefferson City, MO 65102-0480
Leora Andrews
Compliance Liaison of Legal Services
Special School District of St. Louis County
12110 Clayton Road
St. Louis, MO 63131-2516

Rand Hodgson
10204 S. Outer Belt Road
Oak Grove, MO 64075

by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this 6th day of July, 2004.

Ransom A Ellis, III
Hearing Chairperson