

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

IN THE MATTER OF :)
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 Petitioner)
)
and)
)
Ethel Hedgeman Lyle Academy,)
)
 Respondent)

COVER SHEET

1. (“Student”) is the son of (“Parent”). Student was born on .
2. At all times material to this due process proceeding, Student resided with his Parent and has attended the Ethel Hedgeman Lyle Academy, which is located at 1509 Washington, Suite 800, St. Louis, MO, 63103. (“Academy”).
3. The Student and Parent were represented in this matter by Lawrence N. Doreson of the Children’s Legal Alliance, 4232 Forest Park Avenue, St. Louis, MO, 63108, until September 28, 2005, when Mr. Doreson and the Children’s Legal Alliance withdrew from that representation.
4. The Academy was represented in this matter by Ernest G. Trakas, Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C., 425 South Woods Mill Road, Suite 300, St. Louis, MO 63017.
5. The Parent filed a due process Complaint with the Department of Elementary and Secondary Education (“DESE”) on June 3, 2005 which was received by DESE that same day. The original deadline for mailing the decision in this matter was July 18, 2005.
6. On June 17, 2005, the Hearing Chairperson sent the Parent’s Counsel a copy of the *Procedural Safeguards for Children and Parents*.
7. On June 28, 2005, the Academy requested an extension of the time lines through September 30, 2005. The Hearing Chairperson extended the time lines to September 30, 2005 on June 28, 2005, by a letter that was inadvertently dated July 28, 2005.
8. On June 28, 2004, the Hearing Chairperson issued a Notice of Hearing, setting the hearing for August 11-12, 2005.

9. On August 3, 2005, the parties jointly requested that the due process hearing scheduled for August 11-12, 2005 be postponed and the time lines for the case be extended until November 15, 2005.

10. On August 4, 2005, the Hearing Chairperson issued an Order Postponing Hearing and Extending Hearing Time Lines which extended the time lines for the matter through until November 15, 2005.

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DECISION AND ORDER

On October 5, 2005, the Ethel Hedgeman Lyle Academy (“Academy”) filed a Motion to Dismiss Due Process Request with the Hearing Chairperson. The Hearing Chairperson issues the following Decision and Order regarding the Academy’s Motion.

I. BACKGROUND

A. The Parties

1. The Student attends school at the Academy, which is located at 1509 Washington, Suite 800 in St. Louis, Missouri.
2. The Academy is a Charter School which is organized pursuant to Missouri statutes.
3. The Student and Parent were represented in this matter by Lawrence N. Doreson of the Children’s Legal Alliance, 4232 Forest Park Avenue, St. Louis, MO, 63108, until September 28, 2005, when Mr. Doreson and the Children’s Legal Alliance withdrew from that representation.
4. The Academy was represented in this matter by Ernest G. Trakas, Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C., 425 South Woods Mill Road, Suite 300, St. Louis, MO 63017.

B. Procedural Background

5. The Parent filed a due process Complaint with the Department of Elementary and Secondary Education (“DESE”) on June 3, 2005 which was received by DESE that same day.

The original deadline for mailing the decision in this matter was July 18, 2005. The due process Complaint described the nature of the problem as follows:

“Description of the nature of the problem:

An IEP was requested in March. Paperwork lost & school Regional VP says there will be no nurse. So I should move my son.

Proposed Resolution of problem if known:

A School nurse for my son to receive his meds as part of IEP.”

6. On June 17, 2005, the Hearing Chairperson sent the Parent’s Counsel a copy of the *Procedural Safeguards for Children and Parents*.
7. On June 28, 2005, the Academy requested an extension of the time lines through September 30, 2005. The Hearing Chairperson extended the time lines to September 30, 2005 on June 28, 2005, by a letter that was inadvertently dated July 28, 2005.
8. On June 28, 2004, the Hearing Chairperson issued a Notice of Hearing, setting the hearing for August 11-12, 2005.
9. On August 3, 2005, the parties jointly requested that the due process hearing scheduled for August 11-12, 2005 be postponed and the time lines for the case be extended until November 15, 2005.
10. On August 4, 2005, the Hearing Chairperson issued an Order Postponing Hearing and Extending Hearing Time Lines which extended the time lines for the matter through November 15, 2005.
11. On October 5, 2005, the Academy filed a Motion to Dismiss Due Process Request with the Hearing Chairperson. On October 11, 2005, the Hearing Chairperson transmitted a letter to the Parent which stated in pertinent part as follows:

“Before I rule on the Academy’s Motion, I want to give you an opportunity to express your opinion and provide any additional facts and/or argument that you want concerning the Academy’s Motion. If you feel that your Complaint has not been remedied by the Academy and/or the September 1, 2005 IEP, you need to communicate with me in writing and tell me why your Complaint should not be dismissed. I need to receive your response no later than Thursday, October 27, 2005. If I have not received your response by that time I will assume that you do not intend to respond.”

12. The Parent did not respond to the October 11, 2005 letter sent by the Hearing Chairperson.

C. Time Line Information

13. The Parent filed a due process Complaint with the Department of Elementary and Secondary Education (“DESE”) on June 3, 2005 which was received by DESE that same day. The original deadline for mailing the decision in this matter was July 18, 2005.

14. On June 28, 2005, the Academy requested an extension of the time lines through September 30, 2005. The Hearing Chairperson extended the time lines to September 30, 2005 on June 28, 2005.

15. On August 3, 2005, the parties jointly requested that the due process hearing scheduled for August 11-12, 2005 be postponed and the time lines for the case be extended until November 15, 2005.

16. On August 4, 2005, the Hearing Chairperson issued an Order Postponing Hearing and Extending Hearing Time Lines which extended the time lines for the matter through until November 15, 2005.

D. The Issue And Proposed Remedy

17. The issue raised by the due process Complaint is as follows:

“An IEP was requested in March. Paperwork lost & school Regional VP says there will be no nurse. So I should move my son.”

18. The remedy requested by the Parent is as follows:

“A School nurse for my son to receive his meds as part of IEP.”

E. Undisputed Facts

19. On September 1, 2005 the Student’s IEP team met and prepared an Individualized Education Program (“IEP”) for the Student. The Parent and her Counsel were present at the meeting and participated in the development of the Student’s IEP.

20. The IEP, Page 2 – Present Level of Academic Achievement and Functional Performance, states as follows with respect to the issue raised in the due process Complaint:

“[The Student] is on medication and takes Risperdal and Trileptal before school and Risperdal at noon. In case of side effects the staff will call Health Care for Kids . . .”

II. CONCLUSIONS OF LAW

21. The Academy is a Missouri Charter School District which is organized pursuant to Missouri statutes.

22. The IDEA, its regulations and the *State Plan for Part B of the Individuals With Disabilities Education Act* (2004), (“State Plan”) set forth the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the Academy in providing special education and related services to students with disabilities.

23. The State Plan was in effect at all material times during this proceeding. The State Plan constitutes regulations of the State of Missouri which further define the rights of students with disabilities and their parents and regulate the responsibilities of educational agencies, such as the Academy, in providing special education and related services to students with disabilities.

24. The purpose of the IDEA and its regulations is: (1) “to ensure that all children with disabilities have available to them a free appropriate public education that includes special education and related services to meet their unique needs”; (2) “to ensure that the rights of children with disabilities and their parents are protected”; and, (3) “to assess and ensure the effectiveness of efforts to educate those children.” 34 C.F.R. § 300.1.

25. 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.

26. If parents 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). The right to file a request for a due process hearing is also available to the Local Educational Agency (“LEA”) which in this case is the Academy.

27. The IDEA is designed to enable children with disabilities to have access to a free appropriate public education which is designed to meet their particular needs. *O’Toole by O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 698 (10th Cir. 1998). The IDEA requires the Academy to provide a child with a disability with a “basic floor of opportunity. . . which [is] individually designed to provide educational benefit to the handicapped child.” *Rowley, supra.*, 102 S.Ct. 3034, 3047. In so doing the IDEA does not require that a LEA “either maximize a student’s potential or provide the best possible education at public expense,” *Rowley, supra.*, 102 S.Ct. 3034, 3049; *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 612; and *A.W. v. Northwest R-1 School District*, 813 F.2d 158, 163-164 (8th Cir. 1987). Likewise, the IDEA does not require a LEA to provide a program that will, “achieve outstanding results”, *E.S. v. Independent School District No. 196*, 135 F.3d 566, 569 (8th Cir. 1998); that is “absolutely [the] best”, *Tucker v. Calloway County Board of Education*, 136 F.3d 495, 505 (6th Cir. 1998); that will provide “superior results,” *Fort Zumwalt School District v. Clynes, supra.* 119 F.3d 607, 613; or, that will provide the placement the parents prefer. *Blackmon v. School District of Springfield, R-12*, 198 F. 3d 648, (8th Cir. 1999); *E.S., supra.* 135 F.3d 566, 569. See also: *Tucker, supra.*, 136 F.3d 495, 505; and *Board of Education of Community Consolidated School District No. 21 v. Illinois State Board of Education*, 938 F. 2d 712, 716-17 (7th Cir. 1991).

III. DECISION

The Individuals With Disabilities Education Act, and its Regulations limit the authority of a Hearing Panel to the consideration of the issues raised in the Complaint. The IDEA, 20 U.S.C. §1415(f)(3)(B) states:

“(B) Subject Matter Of Hearing. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.”

A review of the statement of issues and proposed remedy set forth in the due process Complaint reveals that the issue in this matter is limited to an issue involving the preparation of an IEP for the Student; which addresses his need to receive medication at school. While other issues may exist concerning the Student’s educational program at the Academy, this Hearing Panel has no jurisdiction over them because they: (1) were not set forth in the due process Complaint; and/or, (2) were not consented to by the parties to the proceeding.

The information received from the Academy in its Motion to Dismiss included a completed IEP for the Student which, on its face, addresses the receipt of medications by the Student during the school day and also contains a Notice of Action for an evaluation of the Student which was signed by the Parent. The IEP postdates the request for due process and indicates that the Parent and her Counsel were present at the IEP meeting and participated in the discussion regarding the preparation of the IEP.

On October 11, 2005 the undersigned sent the Parent a letter requesting that she provide her position on the question of whether the due process Complaint has been remedied by the Academy and/or the September 1, 2005 IEP. The letter also asked that the Parent indicate why the "Complaint should not be dismissed." No response was received from the Parent

It is the conclusion of the Hearing Chairperson that the issues raised by the due process Complaint have been remedied by the preparation and implementation of the September 1, 2005 IEP. Therefore the issues raised in the due process Complaint are moot.

The decision issued here is very narrow and results from the requirement that absent the consent of both parties, the only issue that can be considered by a Hearing Panel is the issue specifically raised in the due process Complaint. Accordingly, this decision should not be read to preclude the litigation of other issues such as:

1. Whether the Academy conducted a timely and appropriate evaluation of the Student as required by the Individuals with Disabilities Education Act ("IDEA"), its Regulations and the Missouri State Plan ("State Plan").
2. Whether the IEP developed by the Student's IEP team was reasonably calculated to provide the Student with a free appropriate public education in the least restrictive environment.

III. ORDER

The due process Complaint filed by the Parent on June 3, 2005 is dismissed.

Ransom A Ellis, III
Hearing Chairperson

Dated: October 28, 2005

CERTIFICATE OF SERVICE

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

Ms. Mahogany Coats
1245 Hodiament
Apartment B
St. Louis, MO 63112

Mr. Ernest G. Trakas
Tueth, Keeney, Cooper, Mohan
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Ms. Leora Andrews
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St. Louis, MO 63108

Pam Williams
Special Education Legal Services
Department of Elementary and
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Post Office Box 480
Jefferson City, MO 65102-0480

by depositing same in the United States mail at Springfield, Missouri, postage prepaid, duly addressed to said parties on this 28th day of October, 2005.

Ransom A Ellis, III
Hearing Chairperson