

**STATE OF MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
THREE MEMBER DUE PROCESS HEARING PANEL**

	, by and through his parent)	
and legal guardian,	,)
)
	Petitioners,)
)
v.)
)
KANSAS CITY MISSOURI 33 SCHOOL)
DISTRICT,)
)
	Respondent.)

**2007-08 School Year Complaint
Filed April 29, 2008**

COVER SHEET OF PERSONALLY IDENTIFIABLE INFORMATION

Student's Name:

Student's Date of Birth:

Student's Parent:

Parents' and Student's address:

Local Education Agency: Kansas City Missouri 33 School District
(School District)

School District's address: 1211 McGee
Kansas City, MO 64106-2416

Parent's Representative: none

School District's Representative: W. Joseph Hatley and Kristina V. Giddings
Spencer Fane Britt & Browne LLP
1000 Walnut, Suite 1400
Kansas City, MO 64106

Hearing Officers: Marilyn McClure

George Wilson

Janet Davis Baker, Hearing Chair

Date of Due Process Request:

The matter was originally before this Hearing Panel on a due process request made by the Parents on April 29, 2008

Date of Resolution Session:

None.

Explanation of Deviation from 45 Day Time Line:

No deviation. The resolution period expired on June 20, 2008. The 45 day timeline began June 21, 2008. This decision timely issues.

Date of Chairperson's Decision: August 4, 2008.

**STATE OF MISSOURI
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
THREE MEMBER DUE PROCESS PANEL**

STUDENT, by and through his)
parent and legal guardian,)
)
Petitioners,)
)
v.)
)
KANSAS CITY, MISSOURI 33 SCHOOL DISTRICT,)
)
Respondent.)

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter comes before the Chairperson of the three-member hearing panel on the Motion to Dismiss Petitioners’ Due Process Complaint filed by the Kansas City 33 School District (“the School District”).

The School District bases its motion on the Parent’s refusal to participate in a resolution session despite being provided with several opportunities to participate.

The regulations implementing the reauthorized Individuals with Disabilities Education Act (“IDEA”) provide at 34 C.F.R. §300.510(a) that within 15 days of receiving notice of a parent’s due process complaint, and prior to the initiation of a due process hearing, that a school district must convene a resolution meeting with the parent which must include attendance by individualized education program (“IEP”) team members with knowledge of the facts identified in the due process complaint and a school district representative with decision-making authority. Paragraph (b) goes on further to provide that the resolution period lasts for 30 days after the receipt of the due process complaint and if resolution is not obtained within this period, then a due process hearing may occur. The 45 day timeline for a final hearing panel decision is not triggered until the expiration of the 30 day resolution period.

Resolution session participation is required of the parent unless both parties waive the resolution session or agree to use mediation. A school district is allowed, under paragraph (b)(4), to request that the hearing officer dismiss the parent’s due process complaint “if the [school district] is unable to obtain the participation of the parent in the resolution session after reasonable efforts have been made (and documented using the procedures in § 300.322(d)).” Section 300.322(d) requires the school district to keep:

a record of its attempts to arrange a mutually agreed upon time and place [for the resolution session], such as - (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

The School District's Motion contains detailed information, with supporting exhibits, of the School District's attempts to secure the Parent's and Parent's representative's participation in the resolution session. The Parent through counsel at the time requested an extension of the resolution session timeframe which the School District did not oppose and the chairperson granted. During the resolution period the School District scheduled four resolution sessions; for three of these sessions the School District either consulted with Parent or a representative of Parent about the date and time. On each occasion, the Parent or Parent's representative canceled the session on the day of the session. Counsel for the Parent subsequently withdrew from representation. No response has been made by the Parent to this Motion and the chair has had no communication from the Parent.

There is no federal regulation or provision in the Missouri State Plan for Special Education that defines "reasonable attempts" in this context; however, in other contexts, two attempts to secure permission or attendance will suffice.

The Chairperson finds that the School District has complied with the regulation requiring reasonable efforts to be made to obtain the participation of the Parent in the resolution session process. The School District made diligent efforts as contemplated by the commentary to the regulations. The regulations are clear that until such time as a resolution session is held, or the parties mutually waive the resolution session, that a due process hearing cannot occur.

The chairperson grants the School District's Motion to Dismiss and the Parent's due process complaint filed April 29, 2008, is dismissed without prejudice.

IT IS SO ORDERED.

JANET DAVIS BAKER
Chairperson

I hereby certify that a copy of the above and foregoing was sent the 4th day of August, 2008, to:

Petitioner (by certified mail)
Respondent (by certified mail)
W. Joseph Hatley (by regular mail and e-mail)
Marilyn McClure (by regular mail and e-mail)
George Wilson (by regular mail and e-mail)
Margaret Strecker, DESE (by regular mail and e-mail)
Wanda Allen, DESE (by e-mail)