

**DISMISSAL OF COMPLAINT**

**Student's Name:**

**Parents' Names:**

**Parents' Representative:**

**Stephen Walker  
Attorney at Law  
212 East State Road 73, Suite 122  
Saratoga Springs, UT 84043**

**Local Education Agency:**

**Dr. Scott E. Huddleston  
Superintendent  
Washington School District  
220 Locust Street, P.O. Box 357  
Washington, MO 63090-0357**

**Agency Representatives:**

**Ernest G. Trakas  
Attorney at Law  
34 N. Meramec, Suite 600  
St. Louis, MO 63105**

**Hearing Date:**

**October 29, 2007**

**Date of Decision:**

**October 29, 2007**

**Hearing Panel:**

**Marilyn McClure  
Patrick O. Boyle, Chairman  
and  
Jerry Wright**

## DISMISSAL OF COMPLAINT

The LEA Motion of October 19, 2007 is sustained.

The Chairperson issued a Scheduling Order herein on October 22, 2007 permitting the Petitioner to submit evidence on allegations raised under 4(b) of their Amended Complaint as follows:

“The school failed to craft an appropriately drafted IEPs for the 2004-2005, 2005-2006 and 2006-2007 school year [e.g. Present Levels of Educational Performance are absent and the IEPs lack sufficiently measurable Annual Goals and Short Term Objectives]. The types of violations alleged here are similar to those condemned in *Cleveland Heights-University Heights Sch. Dist. V. Boss*, 144 F.3d 391, 398-399 (6<sup>th</sup> Cir.1998) and *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 317 F.3d 1072 (9<sup>th</sup> Cir. 2003). See also *Rowley* at 181-182. The IEP documents themselves are evidence of this and the Parents assert that the key information identified above was absent from each of the IEPs for each of these school years.”

Petitioners attorney objected at hearing to the Scheduling Order issued by the Chairperson as lacking proper legal authority. It was stated that the parents would rather have their Complaint dismissed than proceed under the terms of the Scheduling Order.

The LEA’s Motion to Dismiss notes that the Amended Complaint fails to allege facts sufficient to enable a response.

Relevant IEPs were submitted by the parents’ attorney in response to a Case Management Order of June 6, 2007.

Calendar years 2005 and 2006 are at issue. The relevant IEPs are attached hereto as exhibits:

Exhibit 1, Parents’ Exhibit 5 dated 09/22/04;

Exhibit 2, Parents’ Exhibit 28 dated 05/18/05;

Exhibit 3, Parents’ Exhibit 82 dated 01/25/06; and

Exhibit 4, Parents’ Exhibit 139 dated 11/08/06.

The relevant exhibits do show present levels of educational performance and sufficiently measurable annual goals and short term objectives.

Parents' complaint is dismissed with prejudice for failure to plead facts which warrant the conclusions sought by parents and for failure of the parents to present evidence on the issue permitted by the Scheduling Order.

Any party who does not agree with this Dismissal has the right to bring a civil action with respect to the matter that was the subject of the complaint. The action may be brought in a State Court of competent jurisdiction or in a district court of the United States without regard to the amount in dispute. The party bringing the action shall have 45 calendar days from the date of this decision of the hearing officer to file a civil action.

So Ordered:

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Patrick O. Boyle,  
Chairman of the Three-Member Due Process Panel  
755 Rue St. Francois  
Florissant, MO 63031  
Phone: (314) 838-4500 Fax: (314) 838-7727

Dated: October 29, 2007