

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

XXXXXXXXXXXXXXXXXXXXXXXXXX,)
)
Petitioner,)
v.)
)
SPECIAL SCHOOL DISTRICT)
OF ST. LOUIS COUNTY)
)
Respondent.)

ORDER OF DISMISSAL

On April 9, 2010, the Special School District of St. Louis County (“SSD”) filed a Motion to Dismiss. On April 12, 2010 SSD filed a Supplemental Memorandum in Support of its Motion to Dismiss. On April 14, 2010, the Chairperson entered a Scheduling Order that provided, *inter alia*, for Petitioner (“Student”) and his mother (“Parent”) to file a written response by no later than April 22, 2010. No response has been filed. This Order will address SSD’s Motion to Dismiss.

SSD argues that the Complaint should be dismissed because the Parent has no standing to file a due process case on behalf of Student. SSD provided documentation showing that Student is in the custody of the Children’s Division of the Missouri Department of Family Services and resides at Edgewood Children’s Center in Webster Groves, MO. SSD has also submitted documentation that DESE appointed Donna Brinkley as the educational surrogate for Student.

Under IDEA, surrogate parents are appointed when, in part, a child is a “ward of the state and is living in a facility or group home.” Missouri State Plan for Special Education (“State Plan”) at 76; 34 C. F. R. Section 300.519 (a). A child is a “ward of the state” if the child is “in the custody of a public child welfare agency.” State Plan at 12. The duties of a surrogate parent

include “ represent[ing] their assigned child in all decisions relating to the student’s education as well as matters related to the identification, evaluation and educational placement of the child, as well as the provision of a free appropriate public education to the child.” State Plan at 77.

DESE takes the position that the natural parent of a child for whom a surrogate parent has been appointed may not file a due process complaint on behalf of the child. See DESE webinar for April 1, 2010 found at <http://dese.mo.gov/divspeced/mnthlywebstrmHAL.html>. More particularly, this Question and Answer occurred during the webinar referenced above:

4.1 If a student is a ward of the state and placed in a residential setting by Children’s Division, and an educational surrogate is appointed, can a parent whose rights have not been terminated, still make educational decisions, including initiating due process hearing proceedings?

Answer: No. The parent is not an educational decision-maker even though their parental rights have not been terminated. This is true even though the CD may be inviting the parent to participate in the IEP meeting as part of the attempt to preserve the family unit. If the CD places the child to LIVE with natural parent, then the parent is the educational decision-maker.

While there are no Eighth Circuit decisions on this point, the U. S. Court of Appeals, 2nd Circuit has addressed this specific issue. In *Taylor v. Vermont Dep’t of Educ.*, 313 F. 3d 768, 782 (2nd Cir. 2002) the Court ruled that since the parent’s right to make educational decisions on behalf of his child had been revoked, he had no standing to pursue a due process hearing to challenge the evaluation conducted by the school district. *See also Fuentes v. Board of Education of the City of New York*, 569 F.3d 46, 47 (2nd Cir. 2009) (Parent as non-custodial parent had no standing to challenge the disabled son’s IEP under IDEA).

IT IS THEREFORE ORDERED as follows: Based on the specific facts in this case, the Due Process Complaint filed by Parent on behalf of Student is dismissed with prejudice.

Pamela S. Wright, Hearing Chairperson

Date: _____

CERTIFICATE OF SERVICE

This Order has been served by regular United States Mail on the following persons on this 27^h day of April, 2010:

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