

Before the
Administrative Hearing Commission
State of Missouri



, in the interest of,)	
)	
Petitioner,)	
)	
vs.)	No. 18-1210
)	
SPECIAL SCHOOL DISTRICT)	
OF ST. LOUIS COUNTY,)	
)	
Respondent.)	

DECISION

We grant the motion to dismiss filed by the Special School District of St. Louis County (District) because the issue in this case is not ripe for decision.

Procedure

On November 9, 2018, (Guardian) filed a due process complaint on behalf of (Student). On November 29, 2018, the District filed a motion for involuntary dismissal. On December 7, 2018, Guardian filed a response to the motion.

Analysis

The District argues we should dismiss this case because it is not ripe. According to Guardian’s complaint, on October 4 and 26, 2018, Student’s individualized education program (IEP) team met to review Student’s IEP. The District proposed November 13, 2018, as the third date for continuation of the IEP meeting. On November 9, 2018, Guardian filed her due process complaint, and the November 13 meeting was not held. The District argues that it has taken no

action subject to appeal. It argues that Guardian is attempting to postpone the completion of the IEP meeting, which would interfere with its legal obligation to review the IEP at least annually. The District notes that the end date of Student's IEP is January 2, 2019.

Guardian argues that we should not dismiss this case. She requests the delay of the current IEP meeting because Student is currently involved in an Intensive Outpatient Program (IOP).¹ Guardian expresses concerns that without the results from this IOP, the IEP team will be relying on old information and this will deny a free appropriate public education (FAPE) to Student. The District claims that Guardian will not release information about the IOP, and Guardian responds that the policy of the IOP limits communication to the parents/guardians of the student. She asserts that she has signed a release and the District has communicated with Student's private therapist.

Both sides cite *Anchorage School District v. M.P.*, 59 IDELR 91 (9th Cir. 2012).² In that case, the court found that a district could not disregard its statutory duty to develop an IEP for a student with a disability.³ Guardian argues that the court also found that the district denied FAPE to the student by relying on an outdated IEP.⁴ Guardian argues that conducting the IEP without the IOP information "would result in an IEP being completed with stale data."⁵ We distinguish *Anchorage* as follows. In *Anchorage*, the district was refusing to hold any IEP meetings until there was a ruling on the parents' administrative appeal. In the case before us, the District is attempting to hold the meeting and reach a resolution. Guardian's supposition that this will lead to the team making decisions based on stale data is not the same as the situation in *Anchorage* in which the district continued to use an old IEP that the court found to be

¹ Student receives outpatient treatments at Mercy Hospital in St. Louis, Missouri.

² We cite to the federal cite, 689 F.3d 1047 (9th Cir. 2012).

³ *Id.* at 1055-56

⁴ *Id.* at 1057-58.

⁵ Response to motion at 2.

inadequate. This is particularly true since the District has limited access to the IOP's treatments and the results from the program have not yet been determined.

Guardian also cites *Doug C. v. Hawaii Department of Education*, 720 F.3d 1038 (9th Cir. 2013). The court in that case found that the district denied FAPE to the student when it held an IEP meeting without a parent who was willing to participate. The court stated that the parent was very important and that the district could have gone beyond even the end date of the IEP to reschedule the meeting so that the parent could attend.⁶ The difference in that case is that the IEP meeting had occurred without the parent, and the decision had been made to change the student's placement. In our case, there has been no completed IEP meeting and thus no decision reached. In addition, as the *Anchorage* court noted, a district may proceed without the parent.⁷ The court stated that the district had two choices that would have fulfilled its duties and provided FAPE to the student:

- (1) continue working with M.P.'s parents in order to develop a mutually acceptable IEP, or (2) unilaterally revise the IEP and then file an administrative complaint to obtain approval of the proposed IEP.[⁸]

This appears to be the opposite of what Guardian requests we do in the case before us – stop the District from completing the IEP meeting with what the District has as the most current available data.

We agree with the District that this case is not ripe for a decision at this time.⁹ As the District notes, Guardian may file a due process complaint at a later time if the District takes action related to initiating or changing the identification, evaluation, or education placement of Student or providing FAPE for Student. Guardian may challenge the IEP provisions or the IEP

⁶ *Doug C.*, 720 F.3d at 1045-46.

⁷ 34 CFR § 300.322(d).

⁸ *Anchorage*, 689 F.3d at 1056. See 34 CFR § 300.507(a).

⁹ See *Missouri Soybean Assoc. v. Mo. Clean Water Comm'n*, 102 S.W.3d 10 (Mo. banc 2003) (decision to list rivers on impaired waters list was not ripe for judicial adjudication even if it was viewed as inevitable that EPA would approve list).

procedures when the IEP is completed. Guardian may argue that the District denied FAPE with regard to the IOP results when those results are available for consideration. Student's placement during the pendency of such a complaint will be determined by the "stay put" provision (student allowed to remain in his or her current educational placement, under 20 U.S.C. § 1415 (j)).

We grant the District's motion to dismiss without prejudice to refile a due process complaint. We cancel the hearing.

SO ORDERED on December 13, 2018.

SREENIVASA RAO DANDAMUDI
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
 - (a) Receive the records of the administrative proceedings;
 - (b) Hear additional evidence at the request of a party; and
 - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;
- (2) Appeals may be taken from the judgment of the court as in other civil cases;
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;

(5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. §300.516.