

Before the
Administrative Hearing Commission
State of Missouri



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|-------------------------|-------------------|---|-------------|
| | , in the interest |) | |
| of , | |) | |
| | |) | |
| | Petitioner, |) | |
| | |) | |
| | vs. |) | No. 18-0221 |
| | |) | |
| 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 (the District) and cancel the hearing.

Procedure

On March 30, 2018, (Parent) filed her due process complaint in the interest of (Student). The District filed a response to the complaint on April 9, 2018.

On September 13, 2018, the District filed a motion in limine, or in the alternative, motion for continuance; a request to file a motion to enforce settlement agreement or in the alternative motion for involuntary dismissal/summary decision; and a motion to enforce settlement agreement or in the alternative motion for involuntary dismissal/summary decision. On September 14, 2018, Parent filed a response.

Because the motion to dismiss contains matters outside the pleadings, we consider it a motion for summary decision. 1 CSR 15-3.436(4)(A).¹

Findings of Fact

1. The parties signed a “Settlement Agreement.”
2. The Settlement Agreement contains the following language:

WHEREAS, Parents and District desire to resolve the dispute regarding the issues advanced in Petitioners’ Due Process Complaint.

NOW THEREFORE, in exchange for the promises and covenants contained here, Parents and District agree as follows:

3. Parents agree to dismiss, with prejudice, their Due Process Complaint within three (3) days of the Parents’ signing this **AGREEMENT**.

6. The parties agree that this **AGREEMENT** was negotiated in good faith and that they enter into this **AGREEMENT** for the purposes of avoiding litigation and obtaining the mutual releases, promises and assurances from the other party as stated herein. *Parent specifically state that the services and placement contemplated by this **AGREEMENT** are reasonably calculated to enable Student to make progress in light of his circumstances.*

Exhibit 1 to the motion to dismiss (italics emphasis added).

3. The Settlement Agreement was signed by one parent and dated August 3, 2018. The document was also signed by a representative of the District and dated August 8, 2018.

Conclusions of Law

We have jurisdiction to hear this case. Section 162.961, RSMo. 2016. The District asks us to dismiss this case because the settlement agreement resolves all of the issues in the complaint. Our Regulation 1 CSR 15-3.431 states:

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

(2) Settlement. Settlement means the parties' agreed resolution of any issue in the complaint including a contested case under section 621.045, RSMo. The parties may settle all or any part of the complaint without any action by the commission, where such settlement is permitted by law. If the parties' settlement disposes of the entire complaint –

(C) Respondent may file a motion for involuntary dismissal under rule 1 CSR 15-3.436.

Regulation 1 CSR 15-3.436 provides:

(2) Respondent may file a motion for involuntary dismissal on all or any part of the complaint except that, unless the commission grants leave otherwise, respondent shall not file a motion for involuntary dismissal –

(A) In any case in which any legal authority, other than the commission, sets any maximum time for conducting a hearing on the merits of the complaint;

(B) In any case less than forty-five (45) days before the hearing, except by leave of the commission for good cause.

For good cause, we grant leave for the District to file the motion.

The parties may resolve this case by voluntarily entering into a settlement agreement executed by both parties.² In *State ex rel. St. Joseph School District v. Missouri Dept. of Elementary and Secondary Education*, 307 S.W.3d 209, 214-18 (Mo. App. W.D. 2010), the Court found that the administrative hearing panel (now the Administrative Hearing Commission) was the proper entity to decide whether there was a valid settlement agreement between the parents and school district.³ Therefore, the District's motion requires that we determine whether the parties have a valid settlement agreement as to all issues raised in the due process complaint; if so, we may dismiss the case as settled.

² *J.K. v. Council Rock School District*, 833 F. Supp.2d 436, 446-47 (E.D. Pa. 2011); *J.T. v. Troy School District*, 407 F. Supp.2d 827, 832 (E.D. Mich. 2005).

³ See also *Neosho R-V School Dist. v. McGee*, 979 S.W.2d 537 (Mo. App. S.D. 1998).

The District attached a copy of the Settlement Agreement to its motion to dismiss. The document was signed by a Parent⁴ and an authorized representative of the District. Parent objects to the dismissal, but provided no evidence to attack the settlement agreement or the authenticity of the signatures. There is no evidence that she withdrew from the settlement agreement within three days of the agreement's execution. *See* 34 CFR 300.510(e). Therefore, we find there is a valid settlement agreement between the Parent and the District that disposes of the entire due process complaint.

Parent objects to all of the District's motions. In her response to the motion to dismiss, Parent expresses concern that "circumstances have changed to the point that I no longer believe that the opposition will fulfill the conditions stated in the agreement in good faith." If Parent feels the District is improperly implementing the Settlement Agreement, or that the implementation is not providing Student with a free appropriate public education, she may file another due process complaint on that basis.

Upon our determination that a settlement agreement exists that fully resolves the issues in the due process complaint, we grant the District's motion and dismiss this case. We deny the District's motion for continuance as moot. We need not rule on the District's motion to enforce settlement agreement.⁵ We cancel the hearing.

Summary

We grant the motion to dismiss and cancel the hearing.

SO ORDERED on September 14, 2018.

AUDREY HANSON MCINTOSH
Commissioner

⁴ Both parents are not required to sign a settlement agreement. *See* 34 CFR 300.506(b)(6)(ii) and 34 CFR .510(d)(1) (both regulations state that the settlement agreement must be signed by "both the parent" and the school district).

⁵ The District cites no authority giving us the authority to enforce a settlement agreement. The Settlement Agreement in this case contains the language, "The parties understand and agree that this **AGREEMENT** is enforceable in any state or federal court of competent jurisdiction." Ex. 1 to the motion, #14.