Before the
Administrative Hearing Commission
State of Missouri

, in the interest of Petitioners, vs. UNION R-XI SCHOOL DISTRICT, Respondent.	)	No. 20-0449

DECISION

We dismiss the due process complaint filed by (Parents) on behalf of their minor child (Student) because we lack jurisdiction to grant the relief sought. By order dated February 6, 2020, we canceled the February 19, 2020 pre-hearing conference and ordered it to be rescheduled if necessary. Because of this decision, we will not reschedule the conference.

Procedure

Parents filed a due process complaint against the Union R-XI School District (the "District") on January 27, 2020. We scheduled a pre-hearing conference for February 19, 2020, and a hearing on the complaint for March 16-17, 2020. The District filed a motion to dismiss the complaint on February 5, 2020. On February 13, 2020, Parents responded to the motion.

We may grant a motion for involuntary dismissal based on a preponderance of the admissible evidence. 1 CSR 15-3.436(3). "Admissible evidence" includes an allegation in the

complaint, affidavit, or other evidence admissible under the law. *Id.* We will grant such a motion if we lack jurisdiction over a complaint or if the case is moot. 1 CSR 15-3.436(1)(A) and (B).

We consider the District's exhibits and the complaint, whose allegations we take as true for purposes of ruling on the District's motion.

Findings of Fact

1. Student, who is a grader, attended the District since kindergarten.

2. In 2014, Parents requested that Student be evaluated for special education eligibility. The District refused to do so. In the fall of 2016, Parents requested again that Student be evaluated. The District evaluated Student, but found her ineligible for services under the Individuals with Disabilities in Education Act (IDEA).

3. In the fall of 2017, Student was tested again. She was found ineligible for services under the IDEA and was not provided with an individualized education program ("IEP"). Student was provided with a plan under § 504 of the Rehabilitation Act, 87 Stat. 394, 29 U.S.C. § 794(a).

4. In October 2018, the District identified Student as a student with Other Health Impairments. She was determined to be eligible for IDEA services and was provided with an IEP.

5. On September 27, 2019, the District received an e-mail from Mother to the District's employees Sarah Otto, Lisa Boehmer, and Markie Lampkin. The e-mail stated that Student would no longer be attending school in the District, effective October 1, 2019. The e-mail stated that Student had been accepted at Miriam Academy.

6. Miriam Academy is a private school within the boundaries of the District. It charges tuition. Parents are requesting tuition reimbursement from the District.

7. On September 27, 2019, the District sent Student's records to Miriam Academy pursuant to the Student Information Release Form signed by Mother.

8. On October 1, 2019, Student was "unenrolled" from the District. Motion Ex. A.

9. In the fall of 2019, Student was enrolled at Miriam Academy. Complaint at 1.[1]

10. On January 27, 2020, Parents filed their due process complaint against the District.

Conclusions of Law

This Commission has jurisdiction over due process complaints with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) for a child in this state. Section 162.961.1, RSMo 2016. Parents make several claims under the IDEA, including that Student was denied FAPE. But the District contends we should dismiss this case under the "*Thompson* Rule" for lack of jurisdiction.

The "*Thompson* Rule"

In *Thompson by and through Buckhanon v. Bd. of Special Sch. Dist. No. 1 (Minneapolis)*, 144 F.3d 574 (8th Cir. 1998), the court held that the parent had not stated a cause of action under the IDEA because she filed her due process complaint after the student left the school district previously responsible for his education. *Id.* at 578. The *Thompson* court noted:

> Contrary to [the parent's] assertions, her need to preserve the right to challenge [the student's] prior educational services is not simply a procedural barrier. The purpose of requesting a due process hearing is to challenge an aspect of a child's education and to put the school district on notice of a perceived problem. Once the school district receives notice, it has the opportunity to address the alleged problem[.]

Id. at 579.

Since *Thompson*, courts within the Eighth Circuit have held that a due process challenge may not be lodged against a former school district when the student and his/her parent failed to

[1] The first page of the complaint is the notice form. Page 1 of 2 follows the form.

request a due process hearing before the student was withdrawn. *See*, e.g., *C.N. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 631, n.6 (8th Cir. 2010); *Smith ex rel. Townsend v. Special Sch. Dist. No. 1,* 184 F.3d 764, 768 (8th Cir. 1999). Courts have followed the *Thompson* Rule and "found lack of notice when no formal due process complaint was filed, even though the district was aware that the parent/guardian was dissatisfied with the education provided." *A.H. by and Through D'avis v. Indep. Sch. Dist.,* 466 S.W.3d 17, 29 fn.7 (W.D. Mo. 2015).

In *M.P. ex rel. K.P. v. Indep. School Dist. No. 721,* 326 F.3d 975 (8th Cir. 2003), *M.P.,* a student with schizophrenia attended school in one district, where he had an IEP. In January 2000, a school nurse disclosed that the student had schizophrenia, and the fact became common knowledge among the student body. After that, the student was verbally and physically harassed by other students. Student's mother complained to the district officials, who made suggestions to remedy the situation that mother considered unacceptable. Student's parents enrolled him in a different district for the 2000-01 school year and filed a due process complaint against the first district in November 2000, alleging violations of the IDEA and other laws, including § 504 of the Rehabilitation Act. The court in *M.P.* held that it could not consider student's IDEA claim under the *Thompson* Rule. But it did not dismiss his claim for disability discrimination under § 504 of the Rehabilitation Act.

In *D.L. v. St. Louis City Public School District*, 326 F. Supp.3d 810 (E.D. Mo. 2018), the Court affirmed this Commission's determination[2] that we had jurisdiction despite a *Thompson* Rule argument for dismissal. We focused on the enrollment date in the private school and found that D.L. was still enrolled in the St. Louis District school when the parents' complaint was filed. We found that the parents were making an effort to enroll the student in the private placement

[2] Case No. 16-3786 (AHC May 9, 2017).

school before the complaint was filed, but that the parents and the private placement school finalized enrollment when parents signed the payment agreement – after the complaint was filed.

In the case before us, the District provides no evidence of Student's enrollment beyond the date it sent Student's records to Miriam Academy and Mother's e-mail announcing that Student had been accepted and would attend there. But, taken as true, Parents' complaint settles this issue, asserting: "In the fall of 2019, the [Parents] enrolled [Student] in Miriam Academy." Complaint at 1. This affirms that Student was enrolled in the new school before January 27, 2020.

Parents argue that the *Thompson* Rule does not apply in this case because the private school is within the District's geographical boundaries, and Student has not physically moved out of the District. We disagree. *A.H.,* 466 S.W.3d 17, presents exactly this situation. In that case, the student's guardian transferred the student to a private school located within the district, then to a private school outside of the district's boundaries. In its *Thompson* Rule analysis, the Court did not make a distinction between the two private schools, and affirmed the decision that the guardian could not proceed with the case because she did not file the complaint before the student withdrew from the public school system.

The *A.H.* Court also addressed Parents' argument that following *Thompson* would leave them with no remedy, stating:

> Although D'Avis cannot seek reimbursement for tuition previously paid, while A.H. attended school within the District's borders, the District remained subject to the requirement of offering A.H. a FAPE if she requested it. If a student is enrolled at a private school because of a parent's unilateral decision, the school district does not have an obligation to maintain an active IEP. But a guardian is entitled to have the District perform a reevaluation of the student's IEP once a year, which the District must complete within 60 calendar days of the request. In other words, D'Avis could have requested that the District reevaluate A.H. after she began attending Nativity of Mary School. Nothing "authorizes the school district to ignore a parents request that an IEP be developed for a child simply because the child is presently enrolled in a

> private school." "To the contrary, the statute provides that each child with a disability shall be reevaluated at the request of the child's parent." And if the reevaluation results in either an IEP that the guardian does not believe provides a FAPE, or the refusal to offer an IEP at all, the guardian may file a complaint. Such complaint may include a request that the district pay for private school tuition, which is an available remedy under IDEA. But again, the district's obligation to offer an IEP is contingent on "the child's [guardian] request[ing] a reevaluation," and D'Avis does not allege that she has ever requested a renewed IEP following A.H.'s departure from the District.

Id. at 26-27 (citations omitted).

The *A.H.* Court summarized its holding as follows: "[T]he law in the Eighth Circuit is clear: an IDEA claim is barred when the [parent] does not request a hearing before the child leaves the District." *Id*. at 23.

Because Parents filed their due process complaint several months after Student voluntarily left the District school and was enrolled in a private school, we find their request for relief is barred by the *Thompson* Rule.[3] We have no authority to decide, and express no opinion about, any claims they might have against the District under any other law.

Summary

We grant the District's motion and dismiss this case.

SO ORDERED on February 24, 2020.

_____
PHILIP PREWITT
Commissioner

[3] Because we dismiss the case, we do not address the District's other arguments for dismissal.

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. Specifically, you may request review as follows:

1. Proceedings for review may be instituted by filing a petition in the circuit court of the county of proper venue within forty-five days after the mailing or delivery of the notice of this final decision.

2. The venue of such cases shall, at the option of the plaintiff, be in the circuit court of Cole County or in the county of the plaintiff's residence.

Please take notice that you also have a right to file a civil action in federal or state court pursuant to the IDEA. See 34 C.F.R. Section 300.512.