



Pursuant to 1 CSR 15-3.436(1)(A) we may involuntarily dismiss a complaint, in whole or in part, if we lack jurisdiction to hear it.<sup>2</sup>

### **Analysis**

The District argues that we lack jurisdiction over the Parent's due process complaint because Parent did not allege a cause of action pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA) since Student has been identified as a student with a disability as defined by § 504 of the Rehabilitation Act (§ 504), and not as a child with a disability as defined in the IDEA. More specifically, the District argues that Parent's due process complaint does not allege a matter "relating to the indemnification, evaluation or educational placement of a child with a disability, or the provision of FAPE to" Student. Resp. Mt. at 2, quoting 34 C.F.R. § 300.507(a)(1).

Primarily, Parent's complaint alleges that her son was assaulted by a staff member, suspended for 180 days based on a false claim, and has not received educational services since October 2, 2019. In her response to the District's motion, Parent stated:

I believe my [son] is not disabled under the IDEA, I believe he is disabled under Section 504. I still think he should be allowed a due process hearing because his civil rights were violated when a paraeducator (Michael Hernandez) of the Independence 30 School District assaulted my son by picking him up and smashing him face first to the cement floor, causing a severe concussion and a broken adult front tooth. My son went to youth court on 11/14/2019 over the accusations by this school district and was not found guilty of physical assault against this paraeducator.

Under § 162.961,<sup>3</sup> this Commission has the authority to hear claims arising under the IDEA. Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161

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<sup>2</sup> Per the *Missouri State Plan for Special Education*, (2017), Regulation V, §G, pages 76, the provisions of chapters 536 and 621 and the procedural rules adopted by us shall be followed unless they conflict with the federal regulations or state statutes implementing the IDEA.

<sup>3</sup> Statutory references are to RSMo. 2016, unless otherwise stated.

(Mo. App. W.D. 1974). We do not have the authority to hear § 504 claims. *Smith v. Rockwood R-VI Sch. Dist.*, 895 F. 3d 566, 72 IDLR 111 (8th Cir. 2018).

Parent’s complaint, as confirmed by Parent’s response to the District’s motion, does not allege a matter “relating to the indemnification, evaluation or educational placement of a child with a disability, or the provision of FAPE.” 34 C.F.R. § 300.507(a)(1). The complaint may allege other claims outside the jurisdiction of this Commission, but if we have no jurisdiction to hear a complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

### **Summary**

We dismiss Parent’s due process complaint because we lack jurisdiction to hear it, and cancel the hearing.

SO ORDERED on November 18, 2019.

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RENEE T. SLUSHER  
Commissioner