

BEFORE THE THREE PERSON

HEARING PANEL EMPOWERED

PURSUANT TO SECTION 162.961.R.S.Mo

, parent of

Petitioner,

v.

FORT ZUMWALT SCHOOL DISTRICT

Respondent.

OPINION AND ORDER

There is pending before this Panel in the above referenced matter Respondent's Second Motion To Dismiss Due Process Issues Or, In The Alternative, Motion For Summary Judgment. Petitioner was provided an opportunity to file a reply brief and did so on August 31, 1999. A review of the briefs of law and fact submitted by the parties reveals the following.

1. On or about November 30, 1998, Petitioner requested due process against the District and the Missouri Department of Elementary and Secondary Education ("DESE") with respect to her son, , by writing to DESE.
2. On or about May 25, 1999, Teresa Davis, a School Psychological Examiner for the District and a member of IEP team, spoke by telephone with mother, . Ms. Davis called to find out when she would be available to attend an IEP meeting. An Affidavit of Teresa Davis was submitted to the Panel as a part of Respondent's

Motion.

3. According to the Affidavit, told Davis that she and her husband had sold their house and would be moving out of the District by June 18, 1999. She said they were going to move to a school district that would provide ABA for .

4. Ms. said she would be unable to attend an IEP meeting on June 8 or 9, 1999, because she was going to be in Texas to visit a school district that offered ABA.

5. By order dated May 6, 1999, the Hearing Panel dismissed Petitioner's claims for actual and punitive damages under the Individuals with Disabilities Act ("IDEA"), her claims under § 504 of the Rehabilitation Act, and her claims for attorney's fees, costs, and interest.

6. By order dated May 6, 1999, the Panel dismissed Petitioner's claims against DESE.

Based upon the actions of the parent set forth in the Affidavit of Davis, the Respondent argues that the remaining issue pending before the Panel is moot. The mootness doctrine has been applied to special education administrative hearings. The United States Court of Appeals for the Eighth Circuit recently held that "[I]f a student changes school district..., his or her right to challenge prior educational services is not preserved. Subsequent challenges to the student's previous education become moot because the new school district is responsible for providing a due process hearing." *Thompson v. Board of the Special School District No. 1*, 144 F.3d 574, 1998 U.S. App. LEXIS 9880, at *9 (8th Cir. May 19, 1998). See also *Modesto City Sch. Dist.*, 22 IDELR 400 (SEA Feb. 27, 1995) (dismissing moot due process issues and stating that "[t]he Hearing Officer finds no reason to conclude that the mootness doctrine does not apply in the administrative hearing process"); *Highland Park Indep. Sch. Dist.*, 22 IDLER 389 (SEA Dec. 8, 1994) (dismissing due process claims as moot and/or for failure to state a claim). A hearing panel in Missouri recently dismissed claims for compensatory

services because the student had moved from the school district. *See Poplar Bluff R-1 School District*, (SEA March 22, 1999).

In the instant case Petitioner's remaining claims relate solely to the student's continued enrollment in the Fort Zumwalt School District. Because Petitioner has sold her home and stated that she will change her residence, this Panel cannot render a decision that will address Petitioner's concerns. Accordingly, the Panel finds the Petitioner's remaining claims to be moot and nonjusticiable. An order to this effect shall be issued on this date.

ORDER

Respondent's Motion to Dismiss is granted in accord with the reasoning set forth supra.

SO ORDERED.

Signed this 7th day of October 1999, in the County of St. Louis, State of Missouri, by:

Gerard A. Fowler
Hearing Panel Chair