

**BEFORE THE THREE PERSON
HEARING PANEL EMPOWERED
PURSUANT TO SECTION 162.961 R.S.Mo.**

,
Petitioner,

v.

SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY,

Respondent.

DECISION AND ORDER

The Chairperson has received two motions, the first was filed by the Petitioner on March 13 to add the Hazelwood School District (hereinafter referred to as "HSD") as party respondent. The second motion was filed by Respondent Special School District (hereinafter referred to as "SSD") to dismiss. By order entered March 14, 2000, the parties were given until April 3, 2000 to file their legal memoranda in support of their positions and an additional ten (10) days thereafter to respond to each other's memorandum. On March 30, 2000 the Chairperson, pursuant to request, extended the Petitioner's time to file to April 10, 2000. In addition, the Chairperson granted an additional ten (10) days or to April 20, 2000 for the Petitioner to respond to the letter from HSD dated April 10, 2000, responding to the Petitioner's letter dated April 6, 2000. The Chairperson has now received all of the parties' filings and responses and now takes this matter under submission.

PETITIONER'S MOTION TO ADD HSD AS PARTY RESPONDENT

Neither party nor HSD has submitted any authority which either supports or shows a lack of support for adding

HSD as a party respondent. The Chairperson is inclined to grant the Petitioner's motion. Although SSD has primary responsibility for the provision of special

educational services in St. Louis County, nevertheless, the local school district (in this case HSD) would have certain contacts with a special education student, including in-put in the initial evaluation to determine whether the student is disabled and in need of special education services and membership on the IEP team. See Federal Register, Vol. 64, No. 48, March 12, 1999, § 300.320 and § 300.344, respectively. (Hereinafter referred to by section.) In fact, the student's home room teacher, Mr. Hosty, served on the evaluation committee (see SSD's Exhibit "A" which is attached to its "Motion To Dismiss"). Therefore, HSD will be added as a party respondent.

RESPONDENT SSD'S MOTION TO DISMISS

SSD makes the following points in its motion:

1. The Panel lacks jurisdiction because the student has not been diagnosed "disabled."
2. The Panel lacks jurisdiction because the student and his parents moved from HSD and have resided in South Carolina since prior to April 27, 1999.
3. The Panel lacks jurisdiction to expunge the records of HSD.
4. The Panel lacks jurisdiction over SSD regarding the Petitioner's request to expunge HSD's records.

The Chairperson believes that the arguments of SSD have merit. Exhibit "A" which was attached to SSD's motion is a "Special School District Evaluation Summary" dated January 27, 1997 which evaluated the student. That document diagnosed the student as "nondisabled." The evaluation summary was shared with Mr. and Mrs. on or about January 27, 1997 per the letter from Lou Newmark, a diagnostician for the Special School District, which is part of Exhibit "A". That letter makes specific reference to the parents' rights to challenge the determination and to request a review of that action. The evaluation summary also contains a page

entitled "SSD/LEA/Parent Sign-Off Form," dated 1/27/97 which contains the following statement:

"If you are not in agreement with diagnosis(ses), provide a written statement to be attached to this evaluation report.

A verbal interpretation of evaluation results was provided by diagnosticians following this evaluation."

That form also contains the word "nondisabled," and Mrs. signed off on the form. There is no statement indicating disagreement. Thus, Petitioner was not entitled to the protection of IDEA.[1]

Petitioner's argument that a "ramifications" hearing was not held in violation of IDEA Regulations is without merit, since he was not under the protection of IDEA. Moreover, Exhibits "C" and "D" which are attached to SSD's Motion To Dismiss clearly establish that Petitioner was not disciplined for more than ten (10) days and thus, a "manifestation determination" under IDEA was not required even if the Petitioner were disabled which he was not. See § 300.523.

SSD argues that the parents of Petitioner withdrew the Petitioner from HSD and moved to South Carolina on or before April 27, 1999. Petitioner at no time challenges this fact. Significantly, Petitioner's request for a due process hearing was not filed with the Department of Education until on or about July 23, 1999 or approximately three months after the had moved to South Carolina. This is significant because, once a student moves out of the district, it is no longer obligated to provide him with special education services and any IDEA suit becomes moot. See, for example, Rodricus, L. by Betty H. v. Waukegan Community School District No. 60, 28 IDLER 458 (N.D. Ill. 1998); Smith v. Special School District, No. 1, et al., 184 Fed.3d 764 (8th Cir. 1999); Thompson by Buchannon v. Board of Education of the Special School District No. 1, 28 IDLER 173 (8th Cir. 1998); and P.T. Independent School District No. 113, 29 IDLER 13 (D. Minn. 1998).

Next, SSD argues that this Panel lacks jurisdiction to expunge the records of a school district, citing IDEA Regulations 300.305, 300.306, 300.307, 300.308, and 300.309 which relate to the powers of this Panel under those Regulations. In addition, IDEA empowers and requires a school district to identify, evaluate, educationally place, and to provide a free appropriate public education. 20 U.S.C. § 1415(b)(1)(E). The request to expunge a student's disciplinary record is not included in any of those powers or duties.

Finally, SSD argues that the Panel lacks jurisdiction over SSD regarding the Petitioner's request to expunge the records of HSD regarding an incident which occurred on or about April 19, 1999 in one of the shop classes of HSD. This point is well taken. In addition, this Panel has no jurisdiction to order HSD to expunge its records for the reason stated above concerning the lack of authority under IDEA. Moreover, as stated at the beginning of this Decision and Order, this Panel lacks jurisdiction over HSD, in general, because the Petitioner was never diagnosed as "disabled" and was not entitled to protection under IDEA.

Accordingly, it is hereby ordered that Respondent SSD's Motion To Dismiss is granted. It is further ordered, sua sponte, that the Petition is also dismissed against HSD for lack, of jurisdiction over the subject matter.

ENTERED this ____ day of April, 2000.

George J. Bude, Chairperson

cc: Ramon J. Morganstern, Esq.

Richard H. Ulrich, Esq.

Robert P. Baine, Jr., Esq.

Ms. Sue Dame, Panel Member

Ms. Trudy Fulmer, Panel Member

Heidi Atkins Lieberman, Esq.

[1] 20 USC 1400(d) which sets forth the purposes of IDEA limits those purposes to ensure the rights of children with "disabilities."