

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
FEB 8 2011
OFFICE OF STATE
ADMINISTRATIVE HEARINGS

DD., by and through his parents, DD. and
DD.; DD.; and DD,
Plaintiffs,

11-2 33719
Docket No.:
OSAH-DOE-SE-1106474-92-Baxter

v.

LOWNDES COUNTY SCHOOL
DISTRICT,
Defendant.

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LEGAL SERVICES
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ORDER

In a December 6, 2010 Order, this Court required the parties to submit briefs on its jurisdiction to provide compensatory education and reimbursement to Plaintiffs, the remaining requests for relief in this matter.¹ This issue arose when Defendant notified the Court, and Plaintiffs' counsel confirmed, that DD. is currently enrolled at the Georgia Cyber Academy, a program of the Odyssey School, a Georgia State Charter Public School and Local Education Agency.² On January 31, 2011, the Court ordered Plaintiffs to submit an affidavit and supporting records establishing the date DD. was enrolled in the Georgia Cyber Academy ("GCA"). Plaintiffs promptly replied with documentation which indicates that Plaintiffs applied for GCA enrollment on August 24, 2010. Further, Plaintiffs were required to submit all documents necessary for enrollment by September 3, 2010, which they timely did. Based on this admission, this Court finds that DD. enrolled in the Georgia Cyber Academy on or before September 3, 2010.

After a thorough review and consideration of the parties' briefs and a survey of the relevant legal authority as well as the Plaintiffs' admissions regarding D.H.'s enrollment in GCA prior to filing their due process complaint on September 8, 2010, this Court finds that it has no jurisdiction over Plaintiffs' remaining claims for relief. IDEA and Georgia regulations do not specifically address this issue, but a few federal courts around the country have addressed whether claims for compensatory education and reimbursement may be heard when the student no longer attends the Defendant's district school.

¹ The December 6, 2010 Order dismissed claims in Plaintiffs' Complaint associated with prospective relief.

² Trans. from Dec. 2, 2010 pre-hearing conference at 5.

As an initial matter, no binding Eleventh Circuit precedent exists. The only relevant case within this circuit that this Court is aware of is Steven H. v. Duval County Sch. Bd., 2001 U.S. Dist. LEXIS 25814 (2001). In that district court case, the court held that:

This proceeding must be commenced while the student is attending school in the public school district to ensure that the school district is adequately notified of the alleged problem and given an opportunity to cure it. Failure to commence administrative proceedings while the student is attending school in the public school district is fatal to any subsequent IDEA-based claims.

2001 U.S. Dist. LEXIS 25814, *12 (emphasis added).³ In reaching its conclusion, the Steven Court cited the Eighth Circuit decision in Thompson v. Bd. of the Special Sch. Dist. No. 1, 144 F.3d 574 (8th Cir. 1998). In Thompson, the parent withdrew the student from the defendant school district and enrolled him in a charter school prior to filing a due process complaint against the school district. In her complaint, Thompson's parent sought, inter alia, reimbursement for tutoring fees and compensatory education. Id. at 579-80. The Eighth Circuit held that the parent "did not preserve her rights by instituting a due process hearing prior to [the child's] transfer." Id. at 579. Accordingly, the Thompson Court held that "[i]f a student changes school districts and does not request a due process hearing, his or her right to challenge prior educational services is not preserved." Id. The Eighth Circuit's holding in Thompson has been recently upheld even though the state statute upon which the court partially relied on has been repealed. C.N. v. Willmar Public Sch., 591 F.3d 624 (8th Cir. 2010) (holding Thompson still good law even though state statute repealed.)

In contrast and cited by Plaintiffs, Michigan District Courts have declined to follow the Thompson line of cases. Instead, the Michigan Courts have found:

no reason that a district should deny a student his right to a due process hearing regarding compensatory educational services simply because the student requested his hearing after, rather than prior to, moving from the district, particularly when the district already has adequate notice of the claims against it.

Lewis Cass Intermediate Sch. Dist. v. M.K., 290 F. Supp. 2d 832, 838-39 (2003); see Grand Rapids Public Sch. v. P.C., 308 F. Supp. 2d 815, 818 (2004) (following the Lewis Cass

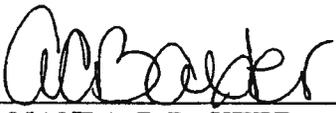
³ In Steven, the parents withdrew the student from the district school and placed him in a private school without notifying the school district prior to filing their due process request. 2001 U.S. Dist. LEXIS 25814, *7.

decision). The Lewis Cass Court found the right to a hearing too important to be barred without a specific prohibition in IDEA. 290 F. Supp. 2d at 839.

While this Court agrees that a right to a hearing is important, this Court declines to follow the Michigan Courts and adopts the position set forth in Thompson and its progeny that all claims against the prior school district are barred once a child is enrolled in a new school district. The Court acknowledges that this position may at times lead to a hard result. The purpose, however, of the due process hearing process cannot be ignored. Specifically, IDEA was designed to allow plaintiffs an opportunity to challenge a specific aspect of a child's education, place the school district on notice of a perceived problem, and potentially allow that district to resolve the problem. See Thompson, 144 F.3d 574, 579. This purpose is thwarted once a child is removed from the school district and enrolled in another public school district. Thus, relying on the only relevant Court of Appeal's decisions, this Court holds that it lacks jurisdiction to resolve the remaining claims for relief in this case, compensatory education and reimbursement, because Plaintiffs enrolled ~~in~~ in another public school district prior to filing a due process complaint against the Defendant. Accordingly,

IT IS HEREBY ORDERED THAT no claims remain for this Court to adjudicate and this matter is **DISMISSED**.

SO ORDERED, this 8th day of February, 2011.



AMANDA C. BAXTER
Administrative Law Judge