

BEFORE THE HEARING OFFICER

In the Matter of
The Special Education Due Process Hearing for
_____ and USD #

File No.: 16 DP -001

ORDER

The matter comes before the hearing officer on a motion to dismiss filed by the U.S.D. # Said motion was filed in compliance with the scheduling order set forth by the hearing officer, and was received on December 23, 2015.

The pro se parent was given until January 4, 2016 to provide a written response and/or rebuttal to the motion, and an email submission was received from the parent on January 5, 2016 by the hearing officer.

The matter is now ready for decision on the motion, and hearing officer states and finds as follows:

Introduction:

The district moves for the dismissal, in its entirety, of the Special Education Due Process Complaint filed by the parent of _____ indicating that all issues presented by the parent are legally "moot," and/or are barred by the two year statute of limitations requirements, especially in regards to the denial of special education transportation.

Issues:

1. Whether the district is entitled to a dismissal regarding whether "never addressing attendance issues" with the parent, and whether said issue is within the jurisdiction of the hearing officer under the special education statutory authorities, and if so whether the parent's complaint is timely under the statute of limitations as outlined in 20 U.S.C.

1415(f)(3)(C).

II. Whether the district is entitled to dismissal regarding the parent issue whether "U.S.D. does not follow special education laws, nor does County Courthouse, " fails to state a claim on which relief can be granted.

III. Whether the district is entitled to a dismissal regarding whether U.S.D. is not sufficiently trained on how to implement IEPs, and that the parent of ____ has failed to state a claim upon which relief can be granted.

IV. Whether the district is entitled to a dismissal regarding whether "when and where the district should report trancies," is within the jurisdiction of the hearing officer under the special education statutory authorities, and if so whether the parent's complaint is timely under the statute of limitations as outlined in 20 U.S.C. 1415(t)(3)(C).

V. Whether the district is entitled to a dismissal regarding whether ____ was denied special transportation service as part of his recognized IEP and/or reasonable accommodations, and that said termination of the special transportation accommodation was done in accordance with all notification requirements.

Findings of Fact:

1. The parent of ____ filed a request for Special Education Due Process Hearing with the Kansas Department of Education on October 13, 2015. Although the form was dated by the parent on October 9, 2015, it was not received and filed stamped by the KDOE until October 13, 2015.

2. In the request for the Special Education Due Process Hearing, the parent listed five (5) "problems" or alleged violations that she desired the hearing officer to address: (1) That the district "never addressed attendance issues" with her directly, except for one "reminder" letter, and a statement regarding the truancy laws, (2) That the district "denied special transportation service, bus service" to her child, (3) That the district "is

under the impression that they do not have to follow any special education rules, regulations, or laws," and that County Courthouse does not follow them either," (4) The district "needs to be trained on how to implement IEPs," and (5) That the district needs trained on "when and where to report truancy.,,

3. The parent provided multiple documents for review attached to the request for the Special Education Due Process Hearing including various attendance records for W.C., report cards for _____, tardy or time in sheets for _____, the school calendar for the _____ Public Schools for 2013-2014, the _____ Elementary School Parent/Student Handbook from 2013-2014, various IEP reports from 2012-2015 (completeness of said reports is not verified), truancy records from County District Court, written correspondence from Principal _____ to the parent dated October 28, 2013, as well as written correspondence from Special Education Director, , dated _____ January 20, 2015, and January 28, 2015. It is noted by the hearing officer that all of the above documents referenced would have been in the possession of the district by virtue of their origin.

4. That _____ was determined as part of his IEP to be eligible for special transportation in August on 2012, and received "special transportation, curb to curb, each day, 5 days a week for the next 36 instructional weeks. " This fact is not in dispute.

5. An IEP Amendment between the Annual IEP Meetings was conducted, and there is a signed agreement that _____ would "no longer requires bus service — parent will transport." Signed both by the district on August 28, 2013, and then by the parent of _____ on September 6, 2013.

6. After the signing of the aforementioned agreement to amend the IEP,

_____ received multiple tardies, and trancies as reported by the district to the authorities.

7. On November 26, 2013, the County District Attorney's Office filed truancy charges against _____ and his mother citing, "On November 12th 2013 a truancy concern was received from _____, Principal of _____ Elementary School regarding

_____ The school reports the student has accumulated 5 full or partial days of unexcused absences and 10 full or partial days of unexcused absences since

August 19th, 2013. The school also reports the child has bCen tardy 16 times.'

8. On January 20, 2015, Mr. _____ sent a letter to the parent of _____ indicating that in response to the information provided by the parent, and reviewing the district's own information regarding _____'s special education transportation from the prior year that, "it was found that we [the district] did not adequately notify you of the termination of _____'s special education transportation. Due to this information, we no longer consider the absences occurring after the removal of the transportation to be unexcused."

9. A subsequent letter from Mr. _____ dated January 28, 2015 to the parent of _____, indicates that the district "does not wish to pursue a truancy case for his [_____'s] lack of attendance during the period of time for the 2013-2014 school year. "

Discussion:

In regards to the first issue of the district "never addressing attendance issues" with the parent as an alleged violation, the district argues that that this issue is not within the jurisdiction of the hearing officer under the special education statutory authorities. The hearing officer is persuaded by the arguments of the district that the actual reporting of attendance issues to a parent, is in fact not addressed within the special education statutes, especially regarding truancy reports.

The parent of ____ does not cite any statutory or legal authority indicating that the reporting or "addressing" of attendance issues with the parent is a substantive ground, in which a determination from a hearing officer is required as to whether the child in question received a free appropriate public education. K.S.A. 72-973(g)(1). Although the parent did tangentially communicate concerns that attendance issues were linked to the lack of special transportation services for ____, she did not state a claim as to how the district's alleged failure to report attendance issues, or address the implication of attendance issues with her interfered with ____ access to a free appropriate public education, or in any way interfered with his ability to receive any services indicated on his IEP.

Additionally, the hearing officer does find that the district did attempt to notify the parent of ____'s attendance issues in fact, based upon the documents provided by the parent in her initial request for a Special Education Due Process Hearing. Included in that documentation was the October 23, 2013 letter from Principal _____ indicating issues regarding ____'s tardiness, and extended absences, a letter that the parent admits to receiving as a "friendly reminder" from the district.

Therefore, the hearing officer finds that she does not have jurisdiction over the complaint regarding the allegations that the district never addressed attendance issues with the parent, and that said issue is not covered or subject to the provisions of the applicable special education statutes. Due to this, the hearing officer finds that the parent failed to state a claim upon which relief can be granted, and this issue of the complaint should be dismissed.

The next issue set forth in the complaint by the parent was regarding how "U.S.D. does not follow special education laws, nor does County Courthouse." The parent does not go into detail as to what laws she alleges the district has failed to abide by. Likewise, she

includes failure by the County Courthouse to follow such laws as part of her complaint well.

Although the hearing officer could speculate that a "general" violation of any of the issues stated could be the intention of the parent regarding this claim, unfortunately the parent fails to state a claim plainly or with any specificity on which relief can be granted. The higher courts have held, that "a complaint must contain specific factual matter to state a claim to relief that is plausible on its face." *Jenkins v. Butts Cty. Sch. Dist.*, 984 F. Supp.2nd 1368, 1372 (M.D. Ga. 2013). The parent's failure to state any type of violation with specificity at all is lacking from this issue within the complaint, and in fact the general connotations include parties, such as the County Courthouse, that this officer has absolutely no jurisdiction over.

The hearing officer is further persuaded by the district's argument that with no specific allegations set forth in how they failed to follow special education laws, they are utterly at a loss on how to defend such an accusation. Without the support of any alleged facts, specifics, or even Indications on what "special education laws" were not followed from the parent, the hearing officer has no other choice but to dismiss this issue for failure to state a claim upon which relief can be granted.

Much like the previously addressed issue, the next issue where the parent also alleges and states that U.S.D. is not sufficiently trained on how to implement IEPs, the parent of ____ has again failed to state a claim upon which relief can be granted. Unfortunately, much like the previous issue, the parent fails to state with specificity any actions or failures to act by the district to substantiate such a claim.

In fact, the evidence provided by the parent is to the contrary, which includes various IEP reports, and documentation of meetings in compliance with the IEP standards.

Other than the truancy reports and discontinuation of ____'s special transportation (which will be addressed later in this decision), the parent really does not state with specificity any failures by the district to implement the IEPs or any alleged failure in the training to do so. Due to this lack of factual basis within the complaint, again the hearing officer is compelled to dismiss this issue as well.

The fourth issue alleged by the parent concerned "when and where the district should report trancies." The district raises the argument whether it is within the jurisdiction of the hearing officer under the special education statutory authorities to consider such an issue, and if so whether the parent's complaint is timely under the statute of limitations as outlined in 20 U.S.C. 1415(f)(3)(C).

The hearing officer acknowledges and recognizes the district's statutory requirements to report trancies to legal authorities such as DCF and/or County Attorneys pursuant to K.S.A. 72-1113. Likewise, the hearing officer acknowledges and recognizes that the charges of truancy, or lack thereof, are not within the control of the district, but instead lie solely with the County Attorney. Plainly interpreted, State laws set forth the reporting requirements of school districts, and school districts are required by law to comply with those reporting requirements. Said reporting requirements do not fall within the purview of special educational laws or requirements, and therefore are outside of the jurisdiction of this hearing officer. Based upon the same, this issue shall be dismissed for failure to state a claim upon which relief may be granted.

The final issue regarding the termination of special transportation however, is not so clear cut. The district first alleges that the parent's complaint regarding the termination of special transportation is barred by the statute of limitations, pursuant to 20

U.S.C. 1415(D)(3)(C), and the complaint for the termination .was made in excess of two years since the services were terminated.

On this specific allegation, the hearing officer is persuaded by the evidence of the parent. The parent presents a letter from Mr. the Special Education Director for the district, that acknowledges and confirms that the district did not adequately notify the parent of the termination of ____'s special education transportation, and that said letter was sent on January 20, 2015.

Based upon this admission by the district, that they failed to properly and adequately notify the parent of the termination of the special education transportation, and that failure to properly notify the parent of the same as recent as January 20, 2015, the hearing officer finds a sufficient basis that the parent's complaint is timely filed to avoid out right dismissal. It is important to note, that the district's admission regarding the failure to appropriately notify the parent of the termination of special education transportation services came well over a year after the IEP Amendment Between Annual IEP Meetings was signed by the district on August 28, 2013, and the parent on September 6, 2013, and attached at exhibit 1 to the motion. Likewise, there was no evidence proffered as to the actual date that the transportation services were actually terminated. The hearing officer can assume that it probably occurred sometime after the signature by the parent on September 6, 2013, but there is no indication of the exact date in which the services actually ended.

It is clear from the subsequent correspondence from Mr. in 2015, that the district acknowledged the signature on the September 6, 2013 document was not sufficient to inform the parent of the termination of these services. Once the parent was informed of the notification deficiency, she filed her request for a Special Education Due Process Hearing within the two year period of time, therefore the district's motion to dismiss the issue of the

denial of special education transportation to ____ based upon the statute of limitations is denied.

However, the district raises a second basis for dismissal of the issue of the denial of special education transportation to ____ based upon legal "mootness." In essence, the district argues a basis for dismissal of this issue due to the fact that even if the hearing officer would find in favor of the parent, that the special transportation services were improperly denied and/or terminated, that no relief can be awarded as ____ is no longer enrolled within the district, and was not enrolled in the district for the 2015-2016 school year. There is also no indication from the parent within the complaint, or from any actions known to the district, that there is any intent for ____ to return to the district in the future. Without ____ being a student of the district, there would be no remedy regarding transportation of ____ that could be complied with by the district — even if ordered.

The hearing officer does find this argument compelling, especially when considering supporting case law. Specifically, the hearing officer finds this case similar to the facts of the *Brown v. Bartholomew Consolidated Sch. Corp.*, 442 F.3rd 588 (7th Cir. 2006). In said case, the parents appealed a due process hearing officer's decision to Federal District Court, which upheld the decision. Shortly after that decision was made, the parents moved the child to another town and a different school district. When the appeal was made to the Seventh Circuit, the Court held that they no longer had the ability to alter the legal relationship between the parties, because any remedy provided for the child, and levied against the district, would be advisory only, as the child was no longer under the care or control of the district that was a party. Due to this, the Court found that the issue was moot, and dismissed the same.

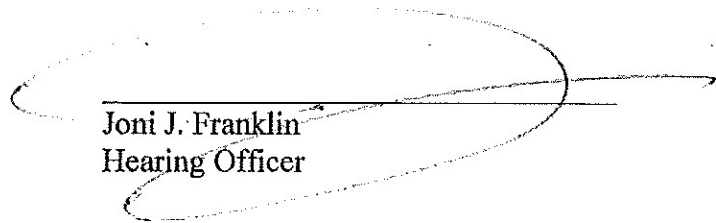
The hearing officer finds the same situation exists in the case at hand. ____ has been removed from the district, and is no longer under the district's care or educational

control. There is no remedy other than an advisory one that could be handed down regarding this issue. As accurately argued by the district, both federal and state courts have held that there is a requirement for a live case or controversy, and that advisory opinions should not be issued. *State ex rel. Morrison v. Sibelius*, 285 Kan. 875, 893-898 (2008). Therefore, this hearing officer finds the issue of whether special education transportation was denied to ____ as legally moot, and thereby dismisses the same.

Order:

For the foregoing reasons, the hearing officer finds that the district has met their burden of proof and hereby dismisses with prejudice the special education due process hearing request and/or complaint by the parent of ____ against U.S.D. # in its entirety.

It is ordered.



Joni J. Franklin
Hearing Officer

Date: January 14th 2016

Right to Appeal

Any party may appeal this decision to the State Board of Education, pursuant to K.S.A. 72974, by filing a written notice of appeal with the Commissioner of Education, Early Childhood, Special Education and Title Services, Landon State Office Building, 900 S.W. Jackson Street, Suite 620, Topeka, Kansas 66612-1212. The Notice of Appeal must be filed with the State Board not later than 30 calendar days after the date this decision is mailed.

Certificate of Service

Certify that I served a copy of the above Order of Dismissal With Prejudice upon each party as indicated below by email transmission and by U.S. mail, postage prepaid on January 14, 2016.

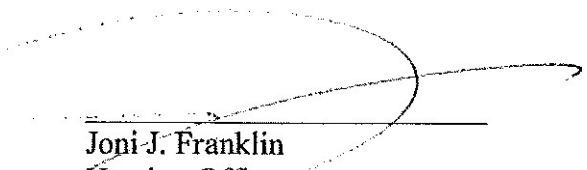
Director of Special Education

Parent

Sarah Loquist
KASB
1420 SW Arrowhead Rd.
Topeka, KS 66604
email:
sloquist@kasb.org

John E. Caton
MARTINDELL SWEARER SHAFFER RIDENOUR LLP
20 Compound Drive
Post Office Box 1907 Hutchinson, KS
67504-1907 email:
ohn.caton@martindell.com

Mark Ward, Kansas State Department of Education
Landon State Office Building, 900 SW
Jackson street, Suite 620 Topeka,
KS 66612-1212



Joni J. Franklin
Hearing Officer