

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF KANSAS**

IN THE MATTER OF THE SPECIAL
EDUCATION DUE PROCESS
HEARING FOR A.M.
and U.S.D. ____
and _____ Coop. District ____

File No. 19 DP ____-001
OAH Case No: 19ED _____

REVIEW DECISION

Pursuant to K.S.A. 72-3418

The above-captioned case was referred for decision to this presiding administrative law judge (ALJ) by the Kansas State Department of Education as authorized by both K.S.A. 72-3418 and K.S.A. 75-37,121(d). Following five days of hearing the local hearing officer issued a ruling upon this case on March 28, 2019. The appellant, A.M. is represented by counsel, Michael S. Jones. The respondents, U.S.D. ____ and _____ Coop. District ____ are represented by counsel Alan Rupe and Jessica Skladzein.

Background Summary:

1. A.M. suffers from a rare genetic condition causing a number of physical disabilities. A.M. has vision and hearing impairment. A.M. has been diagnosed with autism and has feeding concerns and behavior issues.
2. A.M. has attended both public and private schools. He has also been home-schooled for portions of his educational history. A.M.'s parents (Parents) proposed placing A.M. at the Kansas State School for the Blind (KSSB).
3. In 2017 the Parents agreed to an IEP which placed A.M. at the Kansas State School for the Blind (KSSB) in Kansas City, Kansas, 337 miles from A.M.'s home in _____, Kansas.
4. Most students at K.SSB who reside outside of the Kansas City Metro area stay in the dorms at KSSB while attending school.
5. A.M. lived in the dorms in the summer of 2017 during an "Extended School Year" program (ESY) at KSSB. Towards the end of the ESY, A.M. was removed from the program due to behavior and safety concerns after he had locked himself in a room and had attempted to climb out a window. (TR. Vol. 1, P. 96-98)
6. KSSB administration had concerns about A.M.'s behavior and safety and concerns with A.M. staying in the dorms during the 2017-2018 school year. (TR. Vol. 1, p. 100-105.)

7. KSSB administration became aware the Parents had rented an apartment in the area and did not address A.M. staying in the dorms after the summer of 2017. (Tr. Vol. 1, p. 113.)
8. During an April 2017 IEP meeting the Parents indicated that A.M. would not be residing in the dorms during the 2017-2018 school year at KSSB and did not discuss that the Parents would be renting an apartment in Lenexa, Kansas. (Tr. Vol. II, p. 27.)
9. The Parents had considered obtaining an apartment in the Kansas City area as early as February 2017. (Tr. Vol. IV, p. 88.) (Tr. Vol. V, p. 34.) The Parents wrote a check to pay for the apartment on July 11, 2017, prior to the July 2017 IEP meeting. (Tr. Vol. 5, p. 82)
10. During a July 2017 IEP meeting, the Parents never inquired whether Respondent consented to the Parents renting an apartment in Lenexa, Kansas. The Parents did not ask for input from the district regarding renting an apartment in the Kansas City area. They did not discuss the appropriate location for an apartment. They did not inquire whether they would be reimbursed for the apartment or discuss an appropriate cost for such apartment if they would seek reimbursement in the future. (Tr. Vol. II, p. 17-18.) (Tr. Vol. III, p. 28.)
11. After the July 2017 IEP meeting Respondent learned the Parents had rented an apartment in Lenexa, Kansas. (Tr. Vol. II, p. 91.)
12. The Parents never informed Respondent that they were going to cease maintaining the apartment in Lenexa, Kansas. (Tr. Vol. II, p. 93-94.)
13. The parents signed a lease for an apartment in Lenexa, Kansas beginning in July 2017 and as of January 2019 had maintained that apartment on a month-to-month basis with rent at approximately \$1,900 per month. The parents did not consult with the IEP team prior to deciding to rent an apartment. The parents had not been told by either Respondent or KSSB that A.M. would not be eligible to live in the dorms. (Tr. Vol. II, p. 236-237.) (Tr. Vol. IV, p. 204.)
14. A.M.'s Parents have another child who is enrolled at a private school in Shawnee, Kansas, approximately a 12-minute drive from the apartment in Lenexa, Kansas. The parents made the decision to enroll the other child at school in the Kansas, City area in the summer of 2017. (Tr. Vol. III, p. 13-14.) The apartment in Lenexa, Kansas is 22 miles from KSSB. (Tr. Vol. IV, p. 202.)
15. The Parents wanted to be close to A.M. for purposes of transporting him to medical appointments. Their purpose in renting an apartment in Lenexa, Kansas was to be close for medical travel. (Tr. Vol. III, p. 28-29.) (Tr. Vol. IV, p. 188-189.) (Tr. Vol. IV, p. 89.) (Tr. Vol. V, p. 96.)
16. The Parents wanted to be close to A.M. for purposes of medical appointments whether he was staying in the dorms at KSSB or elsewhere. (Tr. Vol. III, p. 189.) It is not known if the Parents would maintain the apartment if A.M. resided in the dorms but wanted to be

close to him to take him to appointments. (Tr. Vol. IV, p. 194-195.)

17. A.M. is seen by a pediatric endocrinologist in Wichita Kansas for regular appointments normally every 4-6 months. Currently he sees the pediatric endocrinologist doctor every 6-8 months. (Tr. Vol. ill, p.30-33.) He is seen by other health care providers in the Kansas City area. (Tr. Vol. ill, p. 33-35.)
18. A.M.' s parents and U.S.D. ____ had disagreements on how much the parents should be reimbursed for transportation expenses between _____, Kansas and KSSB.
19. A.M.'s parents requested a due process hearing. The parties participated in five days of due process hearing held on January 22-24, 2019; February 11, 2019; and February 18, 2019.
20. A.M.'s parents sought reimbursement for expenses of maintaining the apartment in Lenexa, Kansas.
21. Following the due process hearing the Hearing Officer issued an order on March 28, 2019 which found the IBP insufficient. The Hearing Officer found the IBP did not adequately address transportation or housing for A.M. while he was attending classes at KSSB. The Hearing officer held the parents were entitled to reimbursement for transportation expenses for transporting A.M. from _____, Kansas to KSSB.
22. The Hearing Officer determined the parents are not required to maintain the Lenexa apartment to make placement at KSSB feasible.
23. The Hearing Officer decision stated that "No reimbursement shall be directed regarding any expenses associated with the Lenexa apartment, which was the sole choice of the Parents to incur, and are not supports or services addressed within A.M.'s IBP, or discussed with or agreed to by the IBP team." [March 28, 2019 Decision p. 59]
24. The district did not appeal any of the hearing officer's decision.
25. Appellant's Notice of Appeal asked the Review Officer to find
 - a. A.M.'s parents are entitled to reimbursement for A.M.'s living expenses, room, and board incurred by his parents in connection with providing the Lenexa apartment as a related service to A.M.'s compensatory residential placement at KSSN;
 - b. The parents submit an accounting of such living expenses to the District for reimbursement;
 - c. The parents are a substantially prevailing party as to the issue of reimbursement of A.M.s room and board expenses; and
 - d. Such further relief as the review officer deems fair and equitable under the circumstances.

Factual Findings and Conclusions of Law

1. Any party to a due process hearing provided for under this act may appeal the decision to the state board by filing a written notice of appeal with the commissioner of education not later than 30 calendar days after the date of the postmark on the written notice specified in subsection (a). A review officer appointed by the state board shall conduct an impartial review of the decision. The review officer shall render a decision not later than 20 calendar days after the notice of appeal is filed. The review officer shall:
(A) Examine the record of the hearing; (B) determine whether the procedures at the hearing were in accordance with the requirements of due process; (C) afford the parties an opportunity for oral or written argument, or both, at the discretion of the review officer; (D) seek additional evidence if necessary; (E) render an independent decision on any such appeal not later than five days after completion of the review; and (F) send the decision on any such appeal to the parties and to the state board. [K S.A.72-3418(b)(1)]
2. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* (IDEA) establishes a right to a "free appropriate public education" (FAPE) for children with disabilities. *Board of Ed Of Hendrick Hudson Central School Dist., Westchester City, v. Rowley*, 458 U.S. 176(1982).
3. The review officer has reviewed the record.
4. When an IBP was not reasonably calculated to confer educational benefit, parents could seek reimbursement for tuition cost for placement in a private school if the private placement selected by the parent provided an appropriate education. [*Burlington Sch. Comm. V. Massachusetts Dept. of Education*, 471 U.S. 359, (1985). 34 C.F.R. 300.300.148(c).]
5. While the Hearing Officer found the IBP was not adequate, the Parents' decision to rent an apartment in the Kansas City area is distinguishable from placing a student in a private school and seeking reimbursement for tuition expenses. The evidence on the record from the due process hearing clearly establishes that the Parents made the conscious decision to obtain an apartment in the Kansas City area because they wanted to be close to A.M. while he was attending KSSB. Such decision was for the Parents convenience and personal benefit and not to enable A.M. the opportunity to receive an appropriate education at KSSB.
6. Appellant's appeal is focused on solely the issue of reimbursement for living expenses for an apartment in Lenexa, Kansas.
7. The record is sufficient regarding the circumstances surrounding the Parents' acquisition of the Lenexa apartment. Therefore, it is the decision of the review officer that there is no need to hear additional oral arguments or receive additional written arguments.

17. Appellant's requests for reimbursement for room, board and expenses related to Appellant's choice to maintain an apartment in Lenexa, Kansas and to be found a substantially prevailing party as to this issue are denied.

OFFICE OF ADMINISTRATIVE HEARINGS

A handwritten signature in black ink, appearing to read "Matthew A. Spurgin", is written over a horizontal line.

Matthew A. Spurgin
Administrative Law Judge/Appointed Review Officer
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Telephone: 785-296-2433

Notice of Appeal Rights

Pursuant to K.S.A 72-3418, this decision is subject to review in accordance with the Kansas Judicial Review Act or to an action in federal court as allowed by the federal law. Consistent with state court actions, any action in federal court shall be filed within 30 days after service of the review officer's decision.

8. Additionally, it is the decision of this review officer that it is not necessary to receive additional evidence.
9. A FAPE includes both "special education" and "related services." 20 U.S.C. §1401(9).
10. Medical services and transportation to medical services are not a related service. *Macomb County. Intermediate School District. V. Joshua S.*, 715 F. Supp. 824, 827 (E.D. Mich. 1989).
11. It is the decision of this Review Officer that Appellants were afforded due process during the five days of the due process hearing. Appellants were represented by counsel and allowed to present testimony and evidence regarding why they believed it necessary to secure an apartment in the Kansas City area.
12. The record is clear that the Parents acknowledged
 - a. The Lenexa Apartment was acquired before the July 2017 IEP meeting
 - b. The apartment is 12 miles from the private school their other child attends in Shawnee, Kansas, but 22 miles away from K.SSB.
 - c. The Parents made the decision to rent the apartment which was reported to have a cost of \$1,900 per month without consulting the school district or IEP Team.
 - d. The Parents did not consult the district or IEP team regarding the cost of an apartment or location of an apartment to allow for A.M. to attend K.SSB.
 - e. When the apartment was rented the parents were concerned about A.M. residing in the dorms independently but had not been told he would not be allowed to live in the dorms at K.SSB.
 - f. The Parents wanted to be close to A.M. to be able to transport him to medical appointments. The parents would have acquired the apartment even if A.M. were residing in the dorms at K.SSB.
13. Appellant argued that failing to reimburse living expenses runs afoul of A.M. receiving a FAPE. However, such argument is not supported by the facts on the record.
14. The record is clear the dorms at K.SSB could have been an option for A.M. but for the Parents' notification to the IBP team that they were working on other arrangements and A.M. would not be living in the dorms at K.SSB.
15. The record is clear the Parents choice to unilaterally obtain an apartment without consultation with the district or IEP team was for the convenience of the Parents to transport A.M. to medical appointments. As noted above, medical services and transportation to medical services are not a "related service" that would be included in a FAPE and therefore not covered by *IDEA*.
16. The ALJ as Review Officer finds that the Appellant was afforded due process and the decision of the Hearing Officer is factually and legally correct and is affirmed.

Certificate of Service

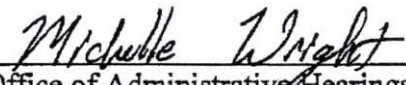
On 5 · 18 2019, I electronically served a copy of this document via the Office of Administrative Hearings e-file system to:

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