

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 16-020609

**Walled Lake Consolidated Schools,
Petitioner**

Case No.: 16-00221

v

Agency: Education

**E. A. and M. A. o/b/o A. A.,
Respondent**

Case Type: ED Sp Ed Regular

Filing Type: Appeal

**Issued and entered
this 30th day of September, 2016
by: Kandra Robbins
Administrative Law Judge**

ORDER GRANTING MOTION FOR DISMISSAL

PROCEDURAL HISTORY

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On or about July 21, 2016 Petitioner, Walled Lake School District filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Kandra Robbins.

This Due Process Hearing Request is related to a Part 8 State Complaint that Respondent Parents filed against the District with the MDE concerning the provision of FAPE for their child, A.A. The Part 8 State Complaint was filed on June 2, 2016. MDE identified the issue as whether Student's May 2015 IEP provided Student with a free appropriate public education. Student died in January 2016. The District requested that MDE find that complaint moot as a result and dismiss the matter. MDE refused to dismiss the matter as moot and continued with their investigation. The District then filed this Due Process Hearing Request in which they have requested that the ALJ enter a decision and order declaring the case moot, dismissing the Parents State Complaint, and Prohibiting MDE from continuing to investigate the Parents' State Complaint.

On July 27, 2016, Respondents filed a Response to the Complaint and a Motion to Dismiss. Respondents contend that the Petitioner failed to state a complaint upon which relief may be granted; Petitioner does not identify any issues relating to the identification, evaluation, or educational placement of the child or the provision of a free

and appropriate education as is required by IDEA; MAHS lacks jurisdiction over MDE and its state complaint responsibilities and that the issue is a systemic issue.

On August 11, 2016, a Prehearing Conference was convened. At that time, it was determined that the both parties had until September 7, 2016 to file a brief to the Motion and both parties could file a Reply Brief by September 14, 2016.

On September 7, 2016, both parties filed a Response and Brief to the Motion to Dismiss. On September 14, 2016, Respondent Parents filed a Reply Brief.

ISSUE and APPLICABLE LAW

The issue is whether this Due Process Complaint should be dismissed.

The Michigan Administrative Hearing System Administrative Hearing Rule 792.10129 provides that an administrative law judge may grant a motion for summary disposition if any of the following exists:

- a. There is no genuine issue of material fact.
- b. There is a failure to state a claim for which relief may be granted.
- c. There is a lack of jurisdiction or standing.

The jurisdiction of this tribunal and the authority of this Administrative Law Judge are governed by the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 *et seq*, the Revised School Code, MCL 380.1701 *et seq*, and their implementing rules and regulations, the Administrative Procedures Act, MCL 24.201 *et seq*, and the Michigan Administrative Hearing System administrative rules.

A due process hearing is proper when the dispute is with respect to the identification, evaluation, or educational placement of a student or whether FAPE has been offered to a student. 20 USC 1415(b)(6). The Federal Regulations also provide that a parent or public agency may file a due process complaint on any matters described in 300.503(a)(1) and (2). The Michigan Administrative Rules for Special Education also limit the jurisdiction in a due process hearing to matters related to the identification, evaluation, educational placement, provision of a free appropriate public education, provision of appropriate services under 34 CFR 303, assignment of financial obligations for services under 34 CFR part 303, determination that behavior was not a manifestation of the student's disability or determination of an appropriate interim alternative education setting by the individualized education program team. MARSE R. 340.1724f.

DISCUSSION AND CONCLUSION OF LAW

Petitioners have filed this Due Process Hearing Request asking this tribunal to address the State Complaint filed by Parents. Respondents have filed a Motion to Dismiss for Lack of Jurisdiction among other reasons. It has long been established that a Motion for Summary Disposition can be filed in an administrative proceeding under the Administrative Procedures Act, MCL 24.271. The Michigan Administrative Hearing Rules specifically provide that a Motion for Summary Disposition can be granted where there is a lack of jurisdiction. Petitioner District contends that the Michigan Court of Appeals decision in *Southfield Public Schools v. Department of Education*, Case No. 316856 (September 16, 2014, unpublished) governs in this matter and grants jurisdiction to this Tribunal to reconsider MDE's Final Decision. Respondents contend that *Southfield* does not expand the jurisdiction of this Tribunal. Petitioner is requesting this tribunal take jurisdiction of this matter and dismiss the Parents State Complaint ending the investigation by MDE.

In order to understand the arguments in this matter, it is important to understand that mechanisms for dispute resolution under IDEA. IDEA provides for two separate and distinct methods for resolving educational disputes. The first method is commonly referred to as Due Process Complaint. This method provides for a formal administrative hearing during which witnesses and evidence are presented and an Administrative Law Judge issues a written decision. The second method is more streamlined and is commonly referred to as a State Complaint. IDEA requires each state to develop the procedures for the State Complaint process. 34 CFR 300.151 *et seq.* In Michigan, a State Complaint is often referred to as a Part 8 Complaint as the State Complaint procedures are contained in Part 8 of the Michigan Administrative Rules for Special Education. R 340.1851 *et seq.*

A party may choose to file either a State Complaint or a Due Process Complaint or both to resolve educational disputes relating to the identification, evaluation, placement, the provision of a free appropriate public education (FAPE) and certain other specific matters such as challenges to a District's manifestation determination or interim alternative placement decisions. *Lewis Cass Intermediate School District v. M.K.* 290 F. Supp. 2d 832 (W.D. Mi. 2002).

Although each is a separate and distinct process, the Federal Regulations contemplate that a Due Process Complaint and a State Complaint may be filed concerning the same issues. The Federal Regulations contain specific procedures to be followed under such circumstances. 34 CFR 300.152(c). In Michigan, these procedures are implemented by the MDE staff submitting a request to the ALJ to compare the issues raised in the Due Process Complaint with the issues raised in the State Complaint. The ALJ identifies which issues will be resolved during the Due Process Hearing and must, therefore, be set aside in the State Complaint under the Federal regulations. As required, MDE then

proceeds to resolve any issues raised in the State Complaint that were not set aside by the ALJ to be addressed in the Due Process Hearing.

In this case, one party, parents, chose to file a State Complaint to resolve an educational dispute concerning placement and provision of FAPE and the use of Interim Trial Placement Agreements. While the second party, the District, chose to file a Due Process Complaint to resolve the dispute concerning the educational placement, provision of FAPE and the use of Interim Trial Placement Agreements.

OSEP recommends that a public agency respect a parents' reasonable choice to use the State Complaint process rather than force the parties to the more formal due process hearing. *Dear Colleague letter April 15, 2015*. In this instance, the District alleges that MDE's State Complaint investigation was not being conducted in a fair and impartial manner and the District filed the Due Process Complaint.¹ Based on the record, it is clear that the District chose to file the Due Process Complaint as a result of its concerns about a fair and impartial investigation and not an attempt to unreasonably deny the Parents rights under the State Complaint process.

Because both a State Complaint and a Due Process Complaint were filed, MDE should have submitted a request to the ALJ to determine which allegations of the Parents' State Complaint would be heard in the Due Process Complaint. However, MDE has never filed such a request with MAHS in this matter. Therefore, this tribunal has no information concerning the status of the State Complaint that was filed in this matter.

There is nothing in Individuals with Disabilities Education Act (IDEA), 20 USC 1400 *et seq*, the Revised School Code, MCL 380.1701 *et seq*, and their implementing rules and regulations, the Administrative Procedures Act, MCL 24.201 *et seq*, and the Michigan Administrative Hearing System administrative rules that provide any authority for this tribunal to review MDE's actions in conducting a State Complaint investigation. If IDEA had contemplated using the Due Process Hearing system as an appeal of the State Complaint system, IDEA would have specifically provided for such jurisdiction.

This tribunal has recently reaffirmed that this Tribunal lacks the jurisdiction to review MDE's compliant investigation proceedings and reverse a final decision issued by MDE. In addition, it was held that the Court of Appeals decision in *Southfield* held that all administrative remedies need to be exhausted prior to seeking judicial review. The Court held that where the remedy sought by a District was within the purview of the Due Process Hearing system, a party would be required to utilize the Due Process Hearing System. To the extent that Petitioner is requesting this tribunal dismiss the State Complaint, this tribunal lacks that jurisdiction.

¹ Although the District has alleged that MDE's investigation was not fair and impartial, the Tribunal lacks jurisdiction concerning these claims and they have not been ruled on.

The issue identified in the Due Process Hearing Request in this matter is whether the May 2015 IEP provided a free appropriate public education for Student.² This allegation is clearly within the jurisdiction of this tribunal.

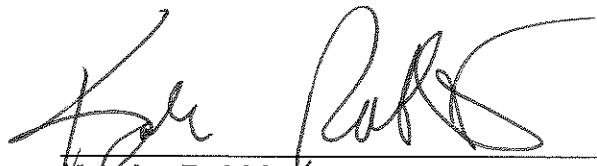
However, because Student is deceased there is no remedy that this tribunal can provide. Because there is no relief that can be granted by this tribunal, this matter is dismissed. No one is seeking reimbursement for any expenditures that occurred prior to Student's death. Therefore, there is no possible relief that can be granted in this matter.

Respondents argued that this matter raises a systemic issue. This argument is nonsense. The issue identified by MDE in this matter is specific to one particular child, A.A. There is nothing systemic in the issue alleged.

Additionally, MDE has not issued a final decision in this matter. In order to appeal a decision made by a State Agency, it must be a final agency action. The proper forum for challenging MDE's actions is under the Revised Judicature Act, MCL 600.63 that specifically provides that a party aggrieved by a final agency decision would be permitted to file an action in state circuit court.

ORDER

Respondents Motion to Dismiss is granted.



Kandra Robbins
Administrative Law Judge

² Student is used to protect the identity of the minor child.