

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 16-022024

**Walled Lake Consolidated Schools,
Petitioner**

Case No.: 16-00239

v

Agency: Education

**E. A. and M. A. o/b/o A. A. & Michigan
Department of Education,
Respondent**

Case Type: ED Sp Ed Regular

Filing Type: Appeal

Issued and entered
this 23rd 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 25, 2016 Petitioner, Walled Lake School District filed a due process request/complaint with the Michigan Department of Education (MDE). On August 10, 2016, 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 concerns a determination made by MDE (Final Decision) concerning a State Complaint, Case No. 16-00032, filed by Respondents against the Petitioner District. The Due Process Hearing Request filed by Petitioner alleged the following procedural errors:

1. MDE usurped the authority of the local intermediate school district (Oakland Schools) to conduct the investigation of the Complaint.
2. MDE's investigation did not provide the District with due process in several ways, including:
 - a. MDE's failure to properly promulgate or publish a rule prohibiting trial placement agreements;

- b. MDE's decision to usurp Oakland School's statutory right and duty to conduct the investigation;
- c. Improper and prejudicial communications between MDE and the Parents, the Parents' advocate and the Parents' attorney before and during MDE's investigation; and
- d. MDE's preliminary decision to issue an interim order on February 11, 2016, without due process; evidence; or proper legal authority.

Additionally, the Due Process Complaint alleges that the Final Decision's conclusion is legally incorrect.

In the Due Process Complaint, Petitioner requested that the ALJ declare that Parents and MDE violated the District's procedural and substantive rights and reverse MDE's Final Decision.

On July 28, 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; Respondents are not a proper party; MAHS lacks jurisdiction over MDE and its state complaint responsibilities and under the doctrine of Res Judicata.¹

¹ On February 4, 2016, Respondent Parents filed State Complaint Case No. 16-00032. On April 1, 2016, a Complaint requesting a Due Process hearing was filed in the matter of *Walled Lake Schools v E.A. and M.A. on behalf of A.A* Docket No. 16-008382. The request consisted of 6 paragraphs outlining the alleged problems. The District's Request also contained five proposed resolutions. The Proposed Resolutions were:

1. MDE's investigation of the Part 8 should be set aside because all of the issues raised in the Part 8 Complaint are before the ALJ in this Complaint.
2. The Student's stay-put placement is the placement described in the Student's May 13, 2015 IEP.
3. The Student's May 13, 2015 IEP provides the Student with FAPE in the least restrictive environment.
4. The District did not circumvent the IEP placement process by proposing a trial placement agreement instead of convening an IEP team meeting.
5. The District did not circumvent the IEP placement process by proposing an arbitration agreement instead of convening an IEP team meeting in that:
 - a. Arbitration agreements are not prohibited by IDEA or Michigan special education law and
 - b. The law favors arbitration agreements and neither DOE nor MDE have authority to rule out the use of arbitration agreements in special education.

On May 2, 2016, a Prehearing Conference was held. During the Prehearing Conference, the alleged problems were discussed and the issues for hearing were clarified. At that time, it was determined that the issues raised in the Due Process Complaint were:

1. Did the May 13, 2015 IEP provide Student with FAPE in the least restrictive environment.
2. Did the District circumvent the IEP placement process in IDEA by proposing a trial placement agreement instead of convening an IEP Team meeting.
3. Did the District circumvent the IEP placement process under IDEA by proposing an arbitration agreement instead of convening an IEP Team meeting.

Respondents had filed a Motion for Summary Judgment. During a Prehearing Conference, it was determined that the jurisdiction of this tribunal is limited to matters relating to the identification, evaluations, or educational placement of a *particular* child or the provision of a free and appropriate education to a *particular* child. This tribunal lacks jurisdiction to determine whether a District has exceeded its legal rights and responsibilities under IDEA in its general practices. The issues as to whether a District has the legal authority to enter into placement agreements in an attempt to resolve disputes or whether it is a violation of IDEA for a District to propose that parties to a dispute participate in arbitration rather than filing a due process complaint or whether exercising the legal options of settlement agreements or arbitration is circumventing the IEP placement process are outside of the jurisdiction of this tribunal. These issues address systemic application of IDEA and were not specific to a *particular* child's education. As a result, it was determined that the sole issue to be resolved during the Due Process hearing was "Did the May 13, 2015 IEP provide Student with FAPE in the least restrictive environment."

On May 18, 2016, MDE submitted a request to the ALJ to compare the State Complaint filed by E.A. and M.A. and the Request for Due Process Hearing to determine if any of the issues raised in the State Complaint were being addressed in the Due Process Hearing. In the State Complaint dated February 4, 2016, the parents submitted ten written pages identifying their concerns. In the State Complaint, the parents alleged that Student was denied a free and appropriate public education due to procedural violations in the development of the May 2015 IEP; that the District pre-determined placement prior to the May 2015 IEP; the District's use of a specially crafted agreement circumvented IDEA and MARSE; and that the District denied Student education in the least restrictive environment. On February 18, 2016, it appears that after a conversation with the Parents, MDE determined that they would proceed with three specific allegations:

1. Whether the district proposed to provide the student with a free and appropriate public education in the least restrictive environment in the May 13, 2015 IEP and notice.
2. Whether the district circumvented the IEP placement process by proposing a trial (sp) placement agreement instead of convening an IEP team meeting.
3. Whether the district circumvented the IEP placement process by proposing an arbitration agreement instead of convening an IEP team meeting.

The three allegations identified by MDE appeared to be identical to how the issues were initially raised in the Due Process complaint. However, upon clarifying the issues in the Prehearing conference, it was clear that the Trial Placement Agreement was entered into as a step to resolve the parents' dissatisfaction concerning the decisions of the IEP team in May 2015. As a result, the issue was phrased as "whether a school district is permitted to enter into settlement agreements" instead of "whether the district circumvented the IEP placement process by proposing a trial placement agreement instead of convening an IEP team meeting". It was determined that this tribunal would not resolve the remaining allegations identified by MDE as:

1. Whether the district circumvented the IEP placement process by proposing a trial (sp) placement agreement instead of convening an IEP team meeting.
2. Whether the district circumvented the IEP placement process by proposing an arbitration agreement instead of convening an IEP team meeting.

On August 11, 2016, a Prehearing Conference was convened. At this time, it was determined that the MDE should have been listed as a Respondent in this matter and given notice of the Prehearing Conference. This Prehearing Conference was continued to August 25, 2016 to provide notice to MDE.

On August 12, 2016, Assistant Attorney General Travis Comstock filed an appearance on behalf of MDE and a Notice that the Tribunal Does Not have Jurisdiction and requested dismissal of the matter.

On August 25, 2016, the continued Prehearing Conference in this matter was convened. It was determined to treat Respondent MDE's Notice as a Motion to Dismiss. Dates were set for the filing of briefs regarding both Motions to Dismiss and setting Oral Argument.

On September 9, 2016, Petitioner filed a Response to the Motions. On September 19, 2016, both Respondent Parents and Respondent MDE filed a Reply to Petitioner's Response.

On September 20, 2016, Oral Argument was convened via teleconference. Attorney Robert Lusk appeared on behalf of Petitioner. Assistant Attorney General Travis Comstock appeared on behalf of Respondent MDE. Petitioner M.A.; Attorney James Comstock-Galagan; Attorney Crystal Grant; Attorney Bradley Dembs; Attorney Erin Diaz; and Intern Heather Olsen appeared on behalf of Respondent Parents.

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.

A due process hearing was held over eight days and a Decision and Order was issued on September 2, 2016. This Tribunal did not address whether Districts have the legal authority to enter into settlement agreements or trial placement agreements outside of the dispute resolution process identified in IDEA or whether Districts are prohibited under IDEA from participating in arbitration to resolve disputes. Because these issues in the State Complaint were not addressed in the Due Process hearing, MDE proceeded to complete a State Investigation on the issues. The Final Decision was entered by MDE on June 21, 2016 and is the issue in this matter.

- 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 to challenge the Final Decision issued by MDE in State Complaint Case No. 16-00032. Both Respondents have filed Motions 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.

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 Compliant 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, 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 the ALJ identified as not 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.²

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 alleged that MDE's State Complaint investigation was not being conducted in a fair and impartial manner and the District filed the Due Process Complaint.³ 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 submitted a request to the ALJ on May 18, 2016 to determine which allegations of the

² The State Complaint is Case No. 16-00032. The Due Process Matter was *Walled Lake Schools v. E.A. and M.A. obo AA*, Docket No. 16-008382.

³ 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.

Parents' State Complaint would be heard in the Due Process Complaint Docket No. 16-008382. The ALJ sent a letter identifying the issues for the due process hearing on or about May 31, 2016 to MDE. On or about June 3, 2016, MDE again contacted the ALJ seeking clarification. A second letter regarding the issues for hearing was submitted to MDE on June 9, 2016. At that time, this ALJ had determined that the issues concerning the use of trial placement agreements and proposed arbitration were not within the jurisdiction of the Tribunal as they did not pertain 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 for Student.⁴ Pursuant to the MARSE rules, MDE completed the State Compliant investigation of the remaining issues and rendered the Final Decision in dispute in this matter. The District is aggrieved by the Final Decision and disputes the Final Decision. The District filed this Due Process Hearing Request specifically to challenge the determination by MDE concerning the State Complaint. Petitioner is requesting this tribunal to declare that Parents and MDE violated the District's procedural and substantive rights and reverse MDE's Final Decision.

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. 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. Petitioner contends that Southfield expanded this tribunal's jurisdiction to permit an appeal or reconsideration of MDE's Final Decision.

In *Southfield*, the Michigan Court of Appeals 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 to exhaust their administrative remedies. In this case, the remedy sought by Petitioners is to declare that MDE violated the District's procedural and substantive rights in conducting the State Compliant investigation and reverse MDE's Final Decision. The remedy sought is not within the purview of the Due Process Hearing system.

Because the issues investigated by MDE in the State Compliant do not involve 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 for Student and

⁴ Student is used to protect the identity of the minor child, A.A.

the requested relief is not within the purview of the Due Process Hearing, I find that this tribunal lacks the jurisdiction in this matter.

Respondents have requested that this matter be dismissed under the principles of collateral estoppel and res judicata. The issue raised in this matter while related to the issues resolved in *Walled Lake v E.A. and M.A. obo AA* Docket No. 16-008382 are not the same. In this instance, District is requesting to have the decision made by MDE reversed. Additionally, the parties are not the same in all of the cases. Therefore, I find that the arguments for collateral estoppel and res judicata are not applicable.

Petitioner argues that Respondent Department is prohibited from arguing that this tribunal lacks jurisdiction because of the position apparently argued by MDE in the *Southfield* case. This argument is also not applicable.

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 grants authority to this Tribunal to review or reconsider MDE's actions in conducting a State Complaint investigation. Again, IDEA identifies two separate and distinct avenues for dispute resolution. To use the Due Process Hearing system as an appeal of the State Complaint system requires an intermingling of the two systems in a manner not contemplated by IDEA. 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. The Petitioner in this matter is asking this Tribunal to reverse MDE's findings. This Tribunal lacks the jurisdiction to serve as an appeal for MDE Final Decision.

ORDER

Respondents Motion to Dismiss for Lack of Jurisdiction is granted.



Kandra Robbins
Administrative Law Judge