

## BEFORE THE HEARING OFFICER

In the Matter of  
The Due Process Hearing for  
BP

File No: 17DP-001

### MEMORANDUM AND ORDER

Respondent moves for reconsideration of this Hearing Officer's denial of its Motion for Summary Judgment. Respondent argues there is no genuine issue of material fact, and the only remaining question is how the law applies to those undisputed facts. This Hearing Officer agrees there are no remaining disputed facts to be contended. Pursuant to K.S.A 72-973(e), K.S.A 72-975 and K.S.A 60-259, the issue of reconsideration is within the authority of this Hearing Officer.

After review of Respondent's Motion For Reconsideration, Petitioners' Response, and Respondent's Reply, this Hearing Officer DENIES Respondent's motion as set forth below. In addition, the Hearing Officer determines these proceedings to result in a final judgment on the pleadings and will dispose of any remaining issues herein.

The facts of this case were discussed and analyzed at length in the parties' dispositive pleadings<sup>1</sup>, and need not be reiterated here. As such, this Hearing Officer will address the District's request for reconsideration, and the effects herein.

#### **I. APPLICABLE LAW REGARDING RESPONDENT'S MOTION FOR RECONSIDERATION**

In Kansas, a motion to reconsider is generally treated as a motion to alter or amend judgment pursuant to K.S.A. 60-259 (2) (F)<sup>2</sup>. Respondent's motion was filed within 28 days after entry of

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<sup>1</sup> Respondent's Memorandum for Summary Judgment, Petitioner's Response to Respondent's Motion for Summary Judgment, Respondent's Reply to Petitioner's Response to Respondent's Motion for Summary Judgment, Respondent's Motion for Reconsideration, Petitioner's Response and Respondent's Reply.

<sup>2</sup> Honeycutt v. Wichita, 251 Kan. 451, 460, 836 P.2d 1128, 1135 (1992).

the court's summary judgment opinion, therefore it is properly considered under K.S.A. 60-259 (F).

Grounds warranting a motion to reconsider include: 1) intervening change in the controlling law; 2) new evidence previously unavailable; and 3) the need to correct or clear error or prevent manifest injustice.<sup>3</sup> A motion to reconsider is most appropriate when the court has misapprehended the facts, a party's position, or controlling law.<sup>4</sup> It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in a prior briefing.<sup>5</sup> The Hearing Officer must consider the evidence in the light most favorable to the nonmoving party.<sup>6</sup>

## **II. ANALYSIS**

Respondent does not cite any basis for their Motion to Reconsider, and none of the aforementioned circumstances are present here. Respondent merely provides additional examples and arguments in support of their Motion for Summary Judgment. However, a Motion For Reconsideration is not a proper mechanism to reframe arguments previously made<sup>7</sup>.

Upon reviewing Respondent's Motion, taking into consideration the applicable law, the Hearing Officer finds the Respondent failed to establish abuse of discretion on any rulings related to the motion for summary judgment, or that the Hearing Officer made an erroneous ruling contrary to controlling or existing authority. Respondents also failed to present any newly discovered evidence that did not exist at the time of the Hearing Officer's decision on the

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<sup>3</sup> Major v. Benton, 647 F.2d 110, 112 (10<sup>th</sup> Cir. 1981); Burnett v. W. res., Inc., 929 F. Supp. 1349, 1360 (D. Kan. 1996)

<sup>4</sup> Anderson v. United Auto Workers, 738 F. Supp. 441, 442 (D. Kan. 1990)

<sup>5</sup> Carolina Indus. Prods., Inc. v. Learjet, Inc., 194 F. Supp. 2d 1170, 1172 (D. Kan. 2002)

<sup>6</sup> Nelson v. Nelson, 288 Kan. 570, 578, 205 P.3d 715, 723 (2009).

<sup>7</sup> Carolina Indus. Prods., Inc. v. Learjet, Inc., 194 F. Supp. 2d 1170, 1172 (D. Kan. 2002)

summary judgment motion, or that a manifest injustice exists by the denial of the summary judgment motion. As such Respondent's Motion For Reconsideration is denied.

### **III. JUDGMENT ON PLEADINGS**

Judgment as a matter of law is proper against a party on a claim or defense that under controlling law, can be maintained or defeated only with a favorable finding on that issue. K.S.A. 60-250.

KSA 60-212(c) provides for disposal of a matter on the pleadings.<sup>8</sup> A Hearing Officer is vested with the same authority in administrative proceedings as a judge of a court.<sup>9</sup> The Hearing officer is appointed for the purpose of conducting the hearing,<sup>10</sup> and in fulfilling her duty to do so is therefore vested with the authority and jurisdiction to rule on all pleadings and matters brought in the course of conducting such hearing.<sup>11</sup> A judge of a court of general jurisdiction possesses the inherent power to summarily dispose of litigation where there remains no genuine issue as to any material fact.<sup>12</sup> Such a judgment is based on the judge's inherent power to dispose of litigation on its own motion as a matter of law.<sup>13</sup> Before such a judgment is entered, the same conditions must exist as would justify a summary judgment on motion of a party.<sup>14</sup> Generally, it must appear conclusively that there remains no genuine issue as to a material fact and that one of the parties is entitled to judgment as a matter of law.<sup>15</sup>

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<sup>8</sup> K.S.A. 60-212 (c)

<sup>9</sup> K.S.A 72-975

<sup>10</sup> K.S.A. 72-973(e)

<sup>11</sup> K.S.A. 72-975

<sup>12</sup> Montoy v. State, 275 Kan. 145, 151, 62 P.3d 228, 233 (2003)

<sup>13</sup> Montoy v. State, 275 Kan. 145, 151, 62 P.3d 228, 233 (2003)

<sup>14</sup> Montoy v. State, 275 Kan. 145, 151, 62 P.3d 228, 233 (2003)

<sup>15</sup> Montoy v. State, 275 Kan. 145, 151-52, 62 P.3d 228, 233 (2003)

Here, even though this Hearing Officer previously determined a genuine issue of material fact exists with regard to the underlying dispute, by the parties' own admissions there are no remaining disputes to be decided. The Hearing Officer's task at this juncture, is to apply and interpret the law as applied to those facts, which the parties indicate, would dispose of the matter.<sup>16</sup> In addition, the parties agree that no testimony at a due process hearing would alter the facts as presented.<sup>17</sup> In other words, the Hearing Officer, as the fact finder, has already heard all facts relevant to the dispute. It is this Hearing Officer's belief that the matter is now ripe for judgment on the pleadings and as a matter of law.

#### **IV. CONCLUSION**

Having considered and reviewed the undisputed material facts, this Hearing Officer finds that the change in services made pursuant to the January 28, 2015 IEP by the Prior Written Notices on January 28, 2016 and February 1, 2016 exceeded the authority provided to the school district by K.S.A. 72-5393, and amounted to a material change of service requiring parental consent as per K.S.A. 72-988(b)(6). This Decision does not in any way attempt to contest, dispute or nullify the authority that the legislature has clearly provided to the District in having the right to choose the site for services as contained in K.S.A. 72-5393. Neither does this Decision attempt to confer an obligation on the District to braille the private school curriculum, of which the decision to do so, remains within their authority, as outlined in K.S.A. 72-5393. This Hearing Office finds that the language, as was contained in the prior IEP's, provided an implication that brailing the private school curriculum was part of what the parties contemplated

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<sup>16</sup> Respondent's Motion for Reconsideration, ¶ 1 and Petitioner's Opposition to Respondent's Motion for Reconsideration ¶ 1, page 1, Memorandum and Order June 12, 2017 and by statements of counsel on June 19, 2017 during the Scheduling Conference

<sup>17</sup> Respondent's Motion for Reconsideration, ¶ 1 and Petitioner's Opposition to Respondent's Motion for Reconsideration ¶ 1, page 1, Memorandum and Order June 12, 2017 and by statements of counsel on June 19, 2017 during the Scheduling Conference

in its drafting. This Hearing Officer further finds that the District had demonstrated a continued prior pattern, of in fact, providing the service. Therefore, although the District had the right to make the decision for the site of services, it did not have the unilateral authority to make a change to what it had previously been providing pursuant to an IEP, without following the proper protocols of K.S.A 72-5393 and 72-988. Had the District properly convened an IEP meeting to consult with and make such a change, and during such meeting the District announced its decision to change the site, and the Petitioner's disagreed, then the parties may very well be receiving a different outcome but that is not the case in this instance.

**IT IS THEREFORE ORDERED** that this Hearing Officer stands by its previous decision on Respondent's Motion For Summary Judgment, and hereby FINDS that the Respondent's Motion for Reconsideration is **DENIED**.

**IT IS FURTHER ORDERED** that in light of the Hearing Officer's ruling on the Respondent's Motion for Summary Judgment and the Respondent's Motion for Reconsideration, and the fact that based on the pleadings, filed herein, there are no other material issues of fact, and having interpreted and applied the law to those facts, Judgment as a matter of law, against the Respondent, is hereby entered.

**IT IS FURTHER ORDERED** that the January 28, 2015 IEP shall remain in effect until properly modified hereafter, and the District shall provide compensation to the parents for any braille costs incurred for the school terms subsequent to January 2016 through the date of this Order.

**IT IS SO ORDERED.**

7/10/17  
Dated

  
Christi L. Bright, Hearing Officer