

**KSDE case # 17DP\_\_\_-002**

**BEFORE THE STATE REVIEW OFFICER**

**ORDER**

Comes now the above-captioned case on for appeal, based on a notice of appeal filed by \_\_\_\_\_ School District, filed August 8, 2017. This is an appeal of a Memorandum and Order entered by the Due Process Hearing Officer on July 18, 2017.

This case is unusual in that no witnesses were heard and no exhibits were presented other than as attachments to pleadings filed by the parties.

There are two written Memorandum and Order that have been issued in the above case. The first was issued June 12, 2017, and was in response to the School District's Motion for Summary Judgement. The second was issued July 18, 2017, in response to the School District's Motion for Reconsideration. It is difficult to understand the basis of the decision, is this a ruling on a Motion for Summary Judgement, a ruling on a Motion for Reconsideration or a decision on the merits of the case?

The July 18th order stated; "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." I would note, this application was done under the color of a Motion for Reconsideration regarding the ruling on a Motion for Summary Judgment.

The June 12 order in denying the Motion for Summary Judgement states; "**Having found that there are genuine issues of facts**, as it relates to those issues, this Hearing Officer cannot resolve the issue pertaining to the appropriate "stay put." Then, with no further facts provided , no testimony and no exhibits, the Hearing Officer states in the July 18, 2017, order "(H)ere, **though this Hearing Officer previously determined 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 standard for acting on a Motion for Summary Judgement and Motion for Reconsideration is not the same as the standard for deciding the case in point, thus, there is lacking a true find of fact and conclusion of law that is not colored by the standard applied in the decision of the Motion for Summary Judgment.

I have there for taken a review of all the submissions of the parties and a review of the transcript of the oral arguments of the parties and find the following.

FACTS:

1. The last approved IEP for the student in the school district was entered January 28, 2015.
2. On January 20, 2016, the school district provided notice to the parents of a modification regarding continued provision of unique curriculum materials for the students use in a private school district.
3. The parents filed a request for a due process hearing on April 25, 2016. This was withdrawn and dismissed without prejudice September 1, 2016.
4. On May 24, 2016, the student was enrolled in the \_\_\_\_\_ School district for the school year 2016 -2017.

5. On September 15, 2016, a second request for a due process hearing was filed by the parents. It is noted this was resolved on October 4, 2016, when certain steps were agreed between the Parents and District, allowing the student to become comfortable with a new school building within the District where she would receive services as set forth in her IEP provided to the student through the District. The Parents elected to continue her attendance at a private school for her general education.
6. On January 20, 2017, a third request for the process hearing was filed by the Parents which is the subject of this hearing.

The January 20th request alleges four problems:

- a. Current services and now, stay put, is rightfully January 28, 2015 IEP, not the improperly amended IEP. Thus, the district has improperly denied the braille materials outlined in that IEP since May 2016. The provision of braille and braille instruction specifically outlined in both the IDEA amendments 1997 and 2004 amendments.
- b. The District failed to follow the procedural safeguards for amending an IEP and therefore the prior written notice dated January 20, 2016, did not amend the January 28, 2015, IEP.
- c. K.S.A. 72-5393 only grants a district the ability to change the site of the related services, not change a material aspect for actual provision of the services. District administration does not have the authority to unilaterally amend or modify an IEP. Only the IEP team and make such changes. K.S.A. 72-987 (b)(1). Here, the District has effectively changed the content of the braille outlined in the Description of Specially Designed Instruction and Related Services in her IEP by

mandating only District curriculum will be braille. This eliminates any access the student would have the general curriculum at \_\_\_\_\_.

- d. The proposed change is not a site change allowed K.S.A. 72-5393. Other than changing content, the actual "site" for the materials to be transcribed into braille remains the same, District staff at a District location.

It appears the question raised in all four points is simply stated as follows:

Was the notice of January 20, 2016, proper, in making the change to the January 28, 2015, IEP?

The answer is yes.

The notice of January 20, 2016 modifies the curriculum to be provided to this student. The student is to be provided the same services and support set forth in her IEP and her education is to follow the guidelines set forth in the IBP. This notice modifies an action regarding curriculum that would be provided to the private school, \_\_\_\_\_, for the instruction of this student. It states the District will provide the standard curriculum, used in the District, in the form of braille, if it is requested by the private school.

The January 20, 2016, did comply with KSA 72-988 (b)(2). This is not a change in placement or services. It is a change in curriculum that would be supported for use in the private school, \_\_\_\_\_.

The January 28, 2015, IEP did not identify any curriculum to be brailled. The public school administration determines what curriculum it will purchase for students across the District to use; parents never make these decisions. K.S.A. 72-8205(c) ("The board shall have authority to prescribe courses of study for each year of the school program and to adopt rules and regulations for teaching in the school district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations of the state

board of education ."

The Parents have elected to use the private school for their daughter. This is a decision they are entitled to make. However, to infer that this means that the Parents must agree to any modification in curriculum, is not supported.

This District may choose the curriculum they are willing to support. I would note that the original IEP from 2015 noted the District excluded the "religious" curriculum used at the private school from their offer to provide some curriculum translation.

The curriculum must provide an appropriate education for this student, and thus may require translation to braille or other modifications that allows the student to access the curriculum, however the District has not transferred the right to choose the curriculum to the private school or the Parents.

The Parents had three choices available to them following the January 2011 notice. They could allow the student to receive 100 percent of her education through the District. They could request the private school to use the curriculum of the District. They could pay for translation of the materials used in the private school.

For these reasons, the Order of the Due Process Hearing Officer is set aside.

I further find and rule the following:

Problem # 1 The proper stay put is the January 28, 2015 IEP as modified by the January 20, 2016, Notice.

Problem #2 The District in fact followed the requirements and thus the Notice of January 20, 2016, was a proper amendment to the January 28, 2015 IEP.

Problem #3 The District has not changed the requirement to provide brailled materials for this student. It has chosen to require the use of District curriculum .

Problem #4 The proposed change, was a change in curriculum, not a change in the nature, duration, or appropriateness of the services, ie...braille ...rather a change in support of the private school curriculum, requiring the use of the standard curriculum as adopted by the District for all student enrolled within the District.

There is no allegation that the standard curriculum of the District is not appropriate for this student. Thus, the request for Due Process fails to state a violation of IDEA in the actions of the School District, and is dismissed.

Further, it is determined that in the event of appeal the proper stay put for this student is the IEP of January 28, 2015, as modified by the Notice of January 20, 2016.

**IT IS SO ORDERED.**

*Aug. 23, 2017*

Dated



Lloyd C. Swartz, State Review Officer

**CERTIFICATE OF MAILING**

Comes now Lloyd C. Swartz, the duly appointed State Review Officer, and states a true and correct copy of the above Order was mailed by certified mail this date to the following:

Tammy M. Somogye  
10851 Mastin Boulevard , Suite 1000  
Overland Park, Kansas 66210  
tsomogye@lathropgage .com

Nancy Huerta  
Equal Chance Education Consulting, LLC  
448 Maddex Farm Drive  
Sheperdstown, West Virginia 25443  
nhuerta@egua lchanceeducation .com

Michael S. Jones  
Jones & McCoy, P. A.  
9401 Indian Creek Parkway , Suite 600  
Corporate Woods Building 40  
Overland Park, Kansas 66210  
mike@ jones -mccoy.com



Lloyd C. Swartz

Aug. 23, 2017

Date

State of Kansas Review Officer PO Box 19193  
Topeka, KS 66619 civsol@aol.com