

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE EDUCATION OF	)	<b>RULING ON DISTRICT’S MOTION FOR SUMMARY DETERMINATION AND FINAL ORDER</b>
	)	
<b>STUDENT v. SPRINGFIELD SCHOOL DISTRICT 19</b>	)	OAH Case No. 2017-ABC-00220 Agency Case No. DP 16-124

**HISTORY OF THE CASE**

On December 14, 2016, the Parents of Student filed a Request for Due Process Hearing with the Oregon Department of Education (ODE) under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC §§ 1400 *et seq.* In their complaint, Parents raised concerns regarding the evaluation, educational placement, and the provision of a free appropriate education to their child. The parties participated in a resolution meeting but did not reach agreement to resolve the dispute.

On December 20, 2016, the Oregon Department of Education (ODE) referred the case to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Alison Greene Webster to conduct the due process hearing and issue a Final Order in this case. ALJ Webster presided over a prehearing conference on January 20, 2017. The Parents participated in the conference without counsel. The Springfield School District (District) participated through its attorney, Richard Cohn-Lee. During the conference, the parties agreed to extend the decision deadline to a date certain (June 2, 2017) pursuant to ORS 343.167(5). A briefing schedule for the District’s anticipated motion for summary determination was established, as was the deadline for issuing a ruling on the District’s motion. In addition, the parties agreed to hold the hearing April 4 through 5, 2017, if the District’s motion was not determinative of all issues.

On January 31, 2017, in accordance with the established schedule, the District filed its Motion for Summary Determination/Ruling on Legal Issues with supporting documentation. Parents did not file a response to the Motion or request an extension of time within the established filing deadline.<sup>1</sup> The record closed on February 21, 2017. On March 1, 2017, Parents requested an extension of time to file a response to the Motion. The ALJ denied the request, finding that Parents had not shown good cause for failing to timely file a response or request an extension of time.

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<sup>1</sup> Based on the schedule set during the prehearing conference and the language of OAR 137-003-0580(2), Parents had 14 days, or until February 14, 2017, to file a response to the Motion.

## **ISSUES**

1. Whether there are genuine issues of material fact in dispute and, if not, whether the District is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.
2. Whether Parents' due process complaint should be dismissed for mootness (the lack of a case or controversy and/or this forum's inability to craft a meaningful remedy) or due to Parents' lack of standing.

## **EVIDENTIARY RULINGS**

In connection with the Motion, the District submitted the following: the Declaration of Brian Megert; Exhibits 1a, 1b, 2 and 3; Parents' Due Process Hearing Request; Attachment 1 – GAO Request for Hearing; Parents' Request for Hearing; and *Framingham Public Schools*, 116 LRP 26018 (June 6, 2016). These documents were made part of the record and considered in ruling on the Motion.

## **FINDINGS OF FACT**

1. Student is in seventh grade and currently attending SAFE Center Residential Treatment Program (SAFE), a school within the geographical boundaries of the Springfield, Oregon School District. Student has been deemed eligible for special education services in the category of Other Health Impairment (OHI) due to the following diagnoses: Reactive Attachment Disorder, Adjustment Disorder with mixed anxiety and depressed mood, Oppositional Defiance Disorder, and Attention Deficit Hyperactivity Disorder set out above. (Mergert Decl.; Attachment 1 – GAO Request for Hearing.)
2. Just prior to attending SAFE, Student attended the Parry Center Residential Program in Portland, Oregon. (Mergert Decl.)
3. Student is currently attending SAFE under an Individualized Education Program (IEP) developed during a meeting on September 28, 2016. Mother attended the September 28, 2016 IEP meeting via telephone. Father did not attend the meeting. During the meeting, the IEP team determined, among other things, Student's present levels of academic achievement and functional performance, Student's annual goals and methods for measuring progress. The team determined Student's needs in terms of specially designed instruction (written language, reading, mathematics and behavior) and considered and confirmed Student's need for specific supplementary aids, services, accommodations or modifications during the school day. As for placement, for the 2016-2017 school year, the IEP team agreed to place Student in day treatment at SAFE. (Exs. 1a and 1b; Mergert Decl.)
4. On December 15, 2016, Parents filed a Request for Due Process Hearing with the ODE under the IDEA using an ODE form. On the form, Parents marked boxes indicating that they had concerns about the evaluation, educational placement, and the provision of a free appropriate education to their child. In describing their concerns, Parents wrote:

Please see the attached request for an investigation. Note, we are disputing the failure of the school to meet the expectations set forth in the IEP (e.g. parental involvement and visitation) as well as the recommendation of the school to move [Student] to another district to avert a complaint with the Oregon Health Authority.

(Parents' Request for Hearing at 6.) In setting out the proposed solution to their concerns, Parents wrote:

Resume contact with family per the necessary interventions outlined in the IEP and stay the decision to transfer school districts until the end of the year of when appropriate placement can be found for reason other than complaints. Require testing and adequate evaluation to determine appropriate placement.

(*Id.* at 7.)

5. Parents attached to the due process complaint form a request that they had filed with the Governor's Advocacy Office of the Department of Human Services (GAO) on or about December 5, 2016 asking for an intervention and investigation. In the attachment, Parents alleged that, among other things, that the Department of Human Services (DHS) had wrongfully restricted contact between Student and Student's family to Student's detriment. (Attachment 1 – GAO Request for Hearing.)

6. On December 19, 2016, the District sent Parents a Prior Written Notice stating in pertinent part as follows:

**DESCRIPTION OF ACTIONS PROPOSED OR REFUSED BY THE DISTRICT:** The parents of [Student] submitted a Due Process Hearing Request proposing that the district 'Resume contact with the family' (between student and parents) and 'stay the decision to transfer school districts.' Based on information collected, both decisions were made by Columbia County DHS Caseworker.

**Explanation of why the district proposes or refuses to take the action:** The Springfield School District does not have the authority to stay the decision to transfer the student out of a residential setting into treatment foster care nor resume contact between the family and the child. Therefore, the District did not refuse to take action outlined in the Due Process Hearing Request submitted by the parents.

**Description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action:** Other treatment and residential options might have been considered by DHS and the treatment team, but not as part of the special education decision making process.

**Description of the factors relevant to the actions proposed or refused are:**

Department of Human Services, Office of Child Welfare of Columbia County Oregon, should be contacted for more relevant information in this decision-making process.

This decision is proposed to be implemented on: Unknown.

(Ex. 3.)

7. On December 28, 2016, Parents, representatives from the District, and a DHS caseworker participated in a resolution session. During the resolution meeting, the District advised Parents that it agreed with Student's IEP, the services and level of placement and Student's current placement at SAFE. The District also advised Parents that it could not override custody and visitation orders imposed by DHS, and could not guarantee or enforce the educational placement with Student's residence (residential treatment facility vs. therapeutic foster care) in dispute. The parties were unable to reach agreement during the resolution session. (Megert Decl.; Ex. 2.)

8. At the time Parents filed their due process complaint and through at least January 31, 2017 (the date of the District's Motion), DHS had temporary guardianship over Student. (Megert Decl.)

### **CONCLUSIONS OF LAW**

1. There are no genuine issues of material fact in dispute. The District is entitled to a favorable ruling as a matter of law.
2. Parents' due process complaint should be dismissed as moot.

### **OPINION**

#### **A. Summary Determination Standard**

OAR 137-003-0580 is titled "Motion for Summary Determination" and provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

- (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
- (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing[.]

\* \* \* \* \*

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

The evidence in the record consists of the Declaration of Brian Megert and the exhibits submitted by the District. As noted above, summary determination in the District's favor is appropriate if the record, viewed in a light most favorable to the non-moving party, shows there is no genuine issue of material fact relevant to the resolution of the determinative legal issue. For the reasons discussed below, I find there are no material facts in dispute relevant to resolution of the determinative legal issue. The District is entitled to a favorable ruling as a matter of law.

## **B. Mootness**

The District contends that the case is moot and should be dismissed because there is no actual case or controversy between Parents and the District. The District asserts that Parents' true dispute is with actions taken by DHS, and not the District. The District also contends that even if OAH retained jurisdiction in this matter, this forum could not craft any meaningful remedy because there is no legal basis for the District to override or countermand a DHS order regarding Student's program or parental visitation rights. As the moving party and proponent of these contentions, the District bears the burden of proof. ORS 183.450(2) ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position"); *Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position).

As the District notes, a case, or an issue in a case, is considered moot "if it has lost its character as a present, live controversy." *Aguirre v. S.S. Sohio Intrepid*, 801 F2d 1185, 1189 (9<sup>th</sup> Cir. 1986). Similarly, a court cannot take jurisdiction over a claim as to which no effective relief can be granted. *Id.*; see also *Allard v. DeLorean*, 884 F2d 463, 466 (9<sup>th</sup> Cir. 1989) ("A case is moot if it has lost its character as a present live controversy. \* \* \* If events subsequent to the filing of an appeal moot the issues presented in a case, no justiciable controversy is presented. \* \* \* This court has no jurisdiction to hear a case that cannot affect the litigant's rights.") (citations omitted.)

These general principles of law are also applicable in the special education litigation

context. A due process complaint is subject to dismissal when there is no live controversy and/or no effective relief for the court to grant. *See, e.g., Lillbask v. Connecticut Dept. of Educ.*, 397 F3d 77 (2<sup>nd</sup> Cir. 2005) (dismissing guardian’s challenges to student’s IEP and placement as moot where district committed to keep student in guardian’s desired placement setting for duration of academic year in question); *see also J.F. v. New Haven Unified Sch. Dist.*, 64 IDELR 212 (N.D. Cal. 2014) (appeal dismissed as moot where court “cannot not grant any meaningful or effective relief” to plaintiff under the IDEA).

In connection with its Motion, the District submitted, among other records, Parents’ due process complaint, Student’s IEP and placement determination, and a Prior Written Notice issued to Parents by the District on December 19, 2016. As found above, Student’s IEP contains Student’s present levels of performance, Student’s annual goals, and methods for measuring progress. Student’s IEP also contains the special education and related services to be provided, the explanation for exclusion from general education and the location of services, all of which are required elements under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. §1400 *et seq.* Student’s IEP does not contain provisions addressing parental involvement or visitation.

In their due process complaint, Parents do not challenge the IEP development process or its implementation. Rather, Parents allege that the District failed to meet the expectations set forth in the IEP with regard to “parental involvement and visitation.” But, because the IEP does not include provisions addressing parental involvement and visitation, the IEP cannot create any expectations in that regard. Similarly, in the complaint, Parents seek as a remedy to “resume contact with family” and to “stay the decision to transfer school districts.” But, because the IEP placement determination is at SAFE, the school Student currently attends, there is no true controversy alleged between Parents and the District in this case. In other words, there is no dispute over Student’s education, no dispute over the contents of the IEP, and no dispute with regard to the placement determination in the IEP.

Moreover, as a matter of law, the District cannot guarantee Parents the remedy they seek. As the District notes, it has no authority over DHS, and cannot disregard a DHS order limiting contact with family or stay an order moving Student to a new therapeutic setting. Because this forum cannot grant any meaningful or effective relief to Parents in this situation, Parents’ due process complaint should be dismissed as moot.

### **C. Lack of Standing**

Alternatively, the District argues that Parents’ due process complaint should be dismissed for lack of standing. In support of this contention, the District offered evidence that at the time Parents filed the due process complaint DHS had obtained temporary guardianship over Student and was intending to seek a long-term guardianship. The District also offered, as legal authority, the case of *Framington Public Schools*, 116 LRP 26018 (Mass. State Educ. Agency, June 6, 2016), in which the Massachusetts Bureau of Special Education Appeals Board ruled that standing is reviewed at the time of filing of a due process complaint, and a parent who lost custody of her child through agency action *after* the filing of a complaint had standing to proceed with the case.

As a general principle, a parent who lacks educational decision-making authority over a child lacks standing to maintain a claim under the IDEA. However, what is clear from *Framingham* and other standing cases is that, in the special education context, the rights of noncustodial parents to pursue due process complaints is a question of state law. *See, e.g., Fuentes v. Bd. of Educ.*, 569 F3d 46 (2d Cir. 2009) (it is a question of state law whether the biological, non-custodial parent of a child retains decision-making authority pertaining to child's education where the custodial parent has exclusive custody of child and the divorce decree and custody order are silent as to the right to control such decisions); *J.C. v. Slippery Rock Area School District*, 54 IDELR 127 (Penn., March 25, 2010) (because Pennsylvania law provides that a temporary award of legal custody does not sever a parent's other rights, parent had standing to file a due process complaint on child's behalf despite fact parent was incarcerated).

Here, the evidence indicates that at the time Parents filed their due process complaint, DHS had obtained a temporary guardianship, meaning that Parents had temporarily lost custody of Student. But, in support of its Motion, the District has offered no authority or argument as to whether, under Oregon law, a temporary award of legal custody to DHS severs a parent's other rights, such as the right to pursue a due process complaint on his or her child's behalf. In the absence of any persuasive authority in this regard, the District is not entitled to a favorable ruling on the issue of Parents' standing (or lack thereof) to file the due process complaint at issue herein.

#### **D. Conclusion**

On the mootness issue, the District has established there are no material facts in dispute and that it is entitled to a favorable ruling as a matter of law. Because the mootness issue is determinative, and requires dismissal of Parents' due process complaint, the question of Parents' standing, though unresolved, has been rendered immaterial.

### **RULING AND ORDER**

The District's Motion for Summary Determination/Ruling on Legal Issues is Granted.

Parent's Request for Due Process Hearing filed December 14, 2016 (DP-16-124) is DISMISSED.

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Alison Greene Webster  
Administrative Law Judge  
Office of Administrative Hearings

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## **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

**ENTERED** at Salem, Oregon this 15th day of March, 2017, with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

**CERTIFICATE OF MAILING**

On March 15, 2017 I mailed the foregoing RULING ON DISTRICT'S MOTION FOR SUMMARY DETERMINATION AND FINAL ORDER in OAH Case No. 2017-ABC-00220 to the following parties.

By: First Class Mail

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