

STATE OF VERMONT
AGENCY OF EDUCATION

Special Education
Case DP # 23-11 (T.D.)

IDEA Due Process Hearing

RULING ON MOTION TO DISMISS

On June 14, 2023 the Vermont Agency of Education received a Section 504 Due Process Complaint from the father of student, T.D. (Student). In the complaint, the father noted numerous allegations against the school district related to a Section 504 eligibility and the 504 team's review of the student, which occurred in the spring of 2023. The father also raised issues about the implementation of the 504 Plan at school, particularly during standardized testing.

During the initial scheduling conference, which was held on June 19, 2023 the District raised objections about the sufficiency of the complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504). During this call, the District alleged that the father's concerns were not covered under Section 504 or federal civil rights law, and that the issues were actually matters of state law, related to a custodial parenting plan that was created by a Vermont Superior Court Order. This order was created in July of 2018. While both parties admit that the order has been challenged repeatedly, they agree that the court ordered parenting plan is still in effect at this time. The District further argued that this parenting plan gives the mother sole educational decision-making authority for the student, which she invoked to help the student receive services under Section 504. The father argued that the parenting plan allows him to also provide input into educational decision making and he asserted that he should have standing to bring the 504 due process complaint as legal coparent of the student. The hearing officer requested a briefing on this matter and also permitted the District to submit its Motion to Dismiss for alleged lack of standing and sufficiency.

On June 26, 2023 the father submitted a brief to establish his rights to file the 504 due process complaint. In this brief, the father alleged that: the District failed to provide him with procedural safeguards, that the District failed to obtain parental consent prior to the Section 504 evaluation and eligibility meeting, the District incorrectly labelled the Student as having a disability under Section 504, and a number of other claims related to fraud, violations of the existing parenting plan, and various provisions of the U.S. Constitution.

As this hearing is legally limited to special education matters, this hearing officer does not have jurisdiction over state or federal law claims outside of special education matters. As such, all legal complaints outside of the Section 504 claims may not be addressed via a Section 504 hearing, and will not be addressed in this order. Therefore, all of the claims outside of the specific Section 504 claims are dismissed due to a lack of subject matter jurisdiction.

On June 26, 2023 the District filed a Motion to Dismiss. The District also submitted a copy of the signed parental consent for evaluation, a copy of the Student's Section 504 Plan, minutes from the May 2023 Section 504 meeting, an April 2023 letter from a pediatrician that explains that the Student has anxiety, email messages that were sent to both of the parents and school staff after the 504-team meeting, and notes from the school support team that show that the Student had experienced some social and classroom issues due to her disability, during the 2022-2023 school year. The District proved via its Motion to Dismiss and the supporting materials, that the Student is a qualified individual with a disability, as defined under Section 504. The District submitted a note from the pediatrician that corroborated the disability and the evaluation materials indicated that the Student is substantially limited in multiple areas of her life, due to this condition. The District correctly argued that Section 504 broadly defines disabilities, which may include physical, mental, or emotional conditions. See 28 C.F.R. § 35.108(b). The District also provided documentation to show the mother, who has legal educational decision-making authority, signed the parental consent for the Section 504 evaluation and attended the evaluation planning meeting as a team member. The District also provided materials that show that both parents were notified of the 504-planning meeting and both parents were provided with a copy of the Section 504 Plan and the Section 504 procedural safeguards. As such, the District provided evidence to refute the existence of a potential Section 504 claim from the father for this complaint. There is no sufficiently cognizable allegation related to Section 504 noncompliance in these claims, that could be proven in a due process hearing. As such, the District's motion to dismiss is granted.

Dated this 29th day of June, 2023.



Claudette Rushing

Hearing Officer, Vermont Agency of Education