

In re: Special Education Due Process Case # DP-24-15

ORDER RE: SCHOOL DISTRICT'S MOTION FOR SUMMARY JUDGMENT

In this case, the School District has filed a Motion for Summary Judgment asserting that (a) Parent's due process complaint seeking an order requiring the school to reimburse Parent for tuition paid to a private school after Parent unilaterally placed Student in that private school is time-barred; and, (b) the School District fulfilled its Child-Find obligations.

Parent did not file a memorandum in opposition to the School District's motion.

For the reasons set forth below, the School District's Motion for Summary Judgment is hereby granted.

FACTS

1. On May 20, 2024, Parent filed a due process complaint requesting tuition reimbursement after Parent unilaterally placed Student in a private school in January 2024.
2. The due process complaint alleged that the School District failed to identify Student's severe anxiety related to bullying at the school in a timely fashion and, as a result, Student was falling behind in Student's studies.
3. The case, docket number 24-15, was assigned to this hearing officer for adjudication.
4. Following an initial phone conference, the School District filed a timely motion for summary judgment that included several attachments, including Student's Kindergarten Report Card, an undated email sent to the school by Parent detailing

- seven incidents involving “hitting, pushing, and bullying,” a description of a parent-teacher conference during which Student’s academic performance was discussed, including a paragraph notifying the school that Parents decided to place Student in a private school, an email dated 12/13/23 from Parent to the School indicating that Student’s last day at the public school would be December 20, 2023, and a letter dated 5/9/24 from an Agency of Education staff attorney to Parent.
5. The School District’s motion asserted that Parent’s request for tuition reimbursement was time-barred because the due process complaint was not filed within 90 days of the Student’s unilateral placement in the private school. In support of this argument, the School District relies on 16V.S.A. §2957(b) and VSER 2365.1.6.1(a)(2).
 6. The School District’s motion further asserts that because the School has not been afforded an opportunity to evaluate Student and determine Student’s eligibility for special education and related services, Parent’s request for future reimbursement is premature and not ripe for review. In support of this argument, the School District cites 16 V.S.A. §2957(e).
 7. The deadline for the submission of Parent’s response to the School District’s motion has passed and no response has been filed.

I. DUE PROCESS COMPLAINTS ARE SUBJECT TO SUMMARY DISPOSITION

The Second Circuit has held that due process complaints are subject to summary disposition. *See J.D. ex rel. J.D. v. Pawlet School District*, 224 F.3d 60, 68-69 (2d Cir. 2000). As the Court observed: "the purpose of an adversarial hearing is to resolve disputed issues of fact. Issues of law reside where they always have - with the adjudicator, whether an

administrative or judicial officer." For that reason, Vermont due process hearing officers are authorized to consider a party's motion for summary judgment.

STANDARD OF REVIEW

Summary judgment should be granted when the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *City of Burlington v. Hartford Steam Boiler Inspection and Ins. Co.*, 190 F. Supp. 2d 663 (D.Vt. 2002). To decide such a motion, the adjudicator must resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party, and decide whether a fact-finder could decide in favor of that party under applicable law. *Scott v. Harris*, 550 U.S. 373, 378 (2007).

II. CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) does not contain a time limitation for filing due process complaints seeking reimbursement for tuition. In the absence of a federal time limitation, "the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." *Wilson v. Garcia*, 471 U.S. 261, 266-267 (1985).

Under Vermont law, "an action against a local, intermediate, or State education agency for reimbursement of the costs of a unilateral special education placement shall be commenced by an administrative due process hearing within 90 days of the unilateral placement, and not thereafter." 16 V.S.A. §2957(b).

Reflecting this statutory mandate, the Vermont Agency of Education has adopted a state regulation requiring that requests for tuition reimbursement be filed within 90 days of a unilateral

placement. VSER 2365.1.6.1(a)(2). This rule is consistent with "[o]ne of the fundamental goals of the statutory scheme codified in the IDEA," i.e., "to promote the expeditious resolution of educational programming disputes." *M.D. v. Southington Board of Education*, 334 F.3d 217, 224 (2d Cir. 2003).

The issue in this case is whether Parent complied with Section 2957(b) and Rule 2365.1.6.1(a)(2) and filed the request for tuition reimbursement within 90 days of Parent's unilateral placement of Student at the private school.

The undisputed facts in this case show that Parents unilaterally placed Student in a private school in January 2024. Parent filed the due process complaint seeking tuition reimbursement on May 20, 2024, long after the 90-day period for filing such requests had expired.

Because Parent failed to file the due process complaint seeking tuition reimbursement within 90 days of Student's unilateral placement in a private school, the School District's motion for summary judgment as to this issue must be granted.

The due process complaint also alleges that the School District failed to meet its Child-Find obligations to identify Student's potential eligibility for special education and related services. The undisputed facts submitted by the School District, however, indicate that during a parent-teacher conference held in early November 2023, the School's Superintendent explained "what a special education evaluation was and [Parent] indicated that [Parent] was not requesting one."

This case does not present a situation where a parent, upon learning about their child's academic struggles, requests a special education evaluation and the local education authority

declines that request. Here, according to the uncontested facts set forth in the School District's motion, Parent turned down the school's offer to evaluate Student to determine Student's eligibility for special education and related services.

In this case, because the School District explained to Parent what a special education evaluation was and Parent told the School District that Parent was not requesting one, the School District fulfilled its Child-Find obligations as of January 2024. i.e., before Parents unilaterally placed Student in a private school. For that reason, the School District's motion for summary judgment as to this issue must be granted.

CONCLUSION

For the reasons stated in this order, the School District's Motion for Summary Judgment is granted and judgment is entered in its favor in this matter.

NOTICE OF APPEAL RIGHT

Pursuant to Vermont Department of Education Rule 2365.1.8:

"(a) The decision of the hearing officer is final unless appealed to a state or federal court of competent jurisdiction.

(b) Parties have the right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction in accordance with Rule 2365.1.9.

Dated, June 7, 2024

David J. Williams
Vermont Agency of Education
Due Process Hearing Officer