

COMMONWEALTH OF KENTUCKY
KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF EXCEPTIONAL CHILDREN SERVICES
CASE NO. 1314-01

RECEIVED
AUG 18 2014
BY:

[REDACTED]

PETITIONER

VS. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

[REDACTED] COUNTY PUBLIC SCHOOLS

RESPONDENT

Petitioner filed a Request for Due Process Hearing on September 25, 2013 alleging that Petitioner had not been provided FAPE, and that Petitioner's IEP from [REDACTED] Public Schools had not been implemented, as well as violations of Child Find regulations. The matter was assigned to the undersigned and an initial Prehearing Conference was held on October 11, 2013. Parties were given the opportunity to engage in a Resolution Session which was unsuccessful. Petitioner then filed a Motion to schedule a Due Process hearing. Telephonic Prehearing Conferences were held on February 5, 2014 and subsequently on April 18, 2014. The parties then submitted their Stipulation of Facts. Respondent filed a Statement of Law which is essentially being treated as a Motion for Summary Judgment. Petitioner replied and a subsequent telephonic Prehearing Conference was held on July 22, 2014 wherein both parties were permitted to supplement their Memorandums of Law and have now done so.

FINDINGS OF FACT

1. The Petitioner was born in November [REDACTED] was identified as a disabled child [REDACTED] under the category of developmental delay. The Petitioner had been educated as a [REDACTED] three-year old in the [REDACTED] County Public School District.

2. [REDACTED] parents declined a free appropriate public education and Occupational Therapy (OT) services from [REDACTED] County, but accepted speech language services of two (2) hours per week from [REDACTED] County personnel and OT services from private care providers. This continued past [REDACTED] birth date of three years old (in November 2012) until such time as [REDACTED] left the [REDACTED] County School District at the end of the 2012-2013 school year.
3. Petitioner's family then moved to [REDACTED] County Public School District in July 2013 with the [REDACTED] County IEP. The Petitioner's IEP provided for services in speech language and occupational therapy.
4. In August 2013 the Petitioner was enrolled in a private preschool in [REDACTED] County and the parents then requested that [REDACTED] receive speech language and occupational therapy services at the private school setting at the cost of [REDACTED] County. Student was enrolled in a private pre school in August 2013 by [REDACTED] parents. Respondent notified Petitioner that since Student was a pre-school student [REDACTED] was entitled to an IEP, not a service plan. Parents then requested for Respondent to provide student with only speech language services and to sign a waiver not to receive OT services.
5. An ARC meeting was conducted in October 2013 to develop a new IEP. In December 2013 an Arc meeting was conducted for review of the IEP and placement of Student in [REDACTED] County for FAPE was rejected by parents. At that time consent for additional evaluations of student were obtained. An ARC meeting was then held in March 2014 and placement in [REDACTED] County was rejected by the parents.

ARGUMENTS

The Petitioner argues that because [REDACTED] was under an IEP in [REDACTED] County and has filed the Due Process request that [REDACTED] is entitled to the same services in [REDACTED] County under the stay put provisions. Respondent argues that because the Petitioner changed from an infant or toddler with a disability under three years of age pursuant to 20 USC 1432 (5) to a pre school aged student of over three years of age that the parents could no longer pick and choose which services would be offered as they were entitled to under the law of an infant or toddler category. Respondent further argued that 34 CFR 300.518(c) prohibits it from providing such services under the stay put provisions.

PERTINENT LAW

1. 20 USC 1432 defines "Infant or toddler" as a child under 3 years of age.
2. 20 USC 1435 provides that infant and toddlers are not required to be provided FAPE. It further requires that such children have an individualized family service plan developed by a multidisciplinary team.
3. 34 CFR 300.518 (c) states "If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those

special education and related services that are not in dispute between the parent and the public agency.”

4. Motions for Summary Judgment are appropriate when there are no issues of fact and only issues of law. See Steelvest, Inc. v. Scanstill Svc. Ctr. Inc., Ky., 80.

CONCLUSIONS OF LAW

1. The child turned age three years old while still in ██████████ County School District in November 2012 and was over the age of three years when enrolled in ██████████ County School District. Thus, the Petitioner had transitioned from an infant or toddler (governed by Part C) to a preschooler (governed by Part B). At such time ██████████ parents were no longer under the law allowed to pick and choose which services to accept with services being allowed outside of the school district by private providers.
2. Further under 34 CFR 300.518 (c) ██████████ County could not service the student under Part C once he moved to ██████████ County in August 2013 because ██████████ had turned three and ██████████ County is not required to provide Part C infant or toddler services the child had been receiving. In fact to provide such services could well be considered a violation of IDEA. This provision specifically addresses how the transition occurs and thus no other stay put provision can override same.
3. Further, since the parents never consented to allow the District to provide services and instead placed the Student in a private pre school ██████████ County was not provided an opportunity to provide FAPE. Therefore, there can be no violation of FAPE.

ORDER

Pursuant to 34 CFR 300.518(c) the Petitioner was not entitled to continue in the services [REDACTED] County had offered under the stay put provision. The parents of Petitioner cannot argue that FAPE has not been provided when they declined allowing the Petitioner to enroll in [REDACTED] County Public Schools. Therefore, there is no relief that can be offered to Petitioner and the request for Due Process Hearing is dismissed as a matter of law. The due process hearing set herein is cancelled.

Dated this 13th day of August, 2014.

Kim Hunt Price
HEARING OFFICER

CERTIFICATE OF SERVICE

The foregoing Order was served by emailing same to [REDACTED] being mailed to Hon. David Wickersham, Kentucky Department of Education, Division of Exceptional Children Services, Capital Plaza Tower, 8th Floor, 500 Mero Steet, Frankfort, K 40601 this 13th day of August, 2014.

Kim Hunt Price
HEARING OFFICER