

STATE OF VERMONT  
AGENCY OF EDUCATION

Special Education  
Case DP # 25-05 (O.S.)

Due Process Hearing

**ORDER ON DISTRICT'S MOTION TO DISMISS**

**BACKGROUND**

The Parent filed a Due Process Complaint for this matter on September 23, 2024. The School District Springfield School District (hereafter "District") filed a Motion to Dismiss (hereafter "the Motion" or "Motion") on October 8, 2024. The Parent filed a response to the Motion on October 14, 2024. In the response, the Parent contested the District's Motion to Dismiss.

**DISCUSSION AND CONCLUSIONS OF LAW**

The parties agreed that the Student attended a District high school during the 2023-2024 school year.

In the Motion to Dismiss, the District contends that the Due Process complaint is not regarding the Student's identification, evaluation, placement, or free appropriate public education (FAPE) but that the complaint is contesting disciplinary matters for the Student. The District argues this violates state special education rule, VSER 2365.1.6.2(b) and further argues that the Parent denied consent for an Individual Education Plan (IEP) and for special education evaluations for the Student. The District also raised a number of arguments related to Statutes of Limitation related to the Parent's complaint items that fall outside of the two-year period which is permissible for IDEA Due Process claims, pursuant to 20 U.S.C § 1415(f)(3)(C). The District noted the Parent did not raise any concerns about not receiving any parental rights 'notices, and articulated that, therefore, the relevant timeframe for the due process hearing allegations may only be for the allegations that occurred between September 23, 2022 through September 23, 2024. Finally, the District argued that the Parent demands remedies that are outside of the scope of potential relief for Individuals with Disabilities Education Act (IDEA) matters. Specifically, the District argues that IDEA does not allow for

compensatory fiscal damages, noting that courts may instead award retrospective or prospective equitable relief for these claims, and stated that hearing officers may only order relief such as compensatory education or tuition reimbursement for students to access FAPE. The District went on to state that the relief the Parent seeks is “well beyond the scope of IDEA” and that the Parents are not entitled to the relief that is sought in the complaint. To corroborate this position, the District cited a recent IDEA Supreme Court opinion, a 2<sup>nd</sup> Circuit Court of Appeals case on point, and a comparable case from the Southern District of New York,

In the Response to the Motion, the Parent argued that they have materials dating back to 2018, that document their requests for special education evaluations for the Student. The Parent mentioned that over the years he expressed a desire for the Student to be evaluated for dyslexia. The Parent agreed with the District that the incident with the Student and discipline for carrying a knife to school were not relevant to this IDEA due process hearing. The Parent agreed they would not consent to an evaluation for an “emotional disturbance” of the Student and stated that the District has required the Student to undergo psychological evaluations as a “condition of being a member of the student body.” The Parent wrote that they never agreed to consent to IDEA evaluations, but instead “...agreed to determine evaluator eligibility.” The Parent wrote that they offered several suggested evaluators to the District, and did not refuse some proposed outside evaluators. The Parent also noted that they rejected the District’s first IEP which included “numerous behavioral improvements” which the Parent contends were not meaningful special education services. In the response, the Parent also noted the Student was found eligible on June 13, 2024. The Parent further argued the District did not have an IEP in effect for the Student when the 2024 school year started on August 29, 2024 and that a general education teacher did not attend the IEP meetings for the 2024 IEP. Finally, the Parent noted they would pursue remedies outside of the IDEA in other forums, but were using an IDEA hearing to exhaust administrative remedies for their concerns.

The Vermont standards for Summary Judgment can be found in the Vermont Rules of Civil Procedure, specifically in Rule 56. This rule states that Summary Judgment shall be rendered only when a party may demonstrate that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law. Additionally, IDEA requires state education agencies (SEAs) to offer parents the ability to access due process hearings, to contest matters related to the identification, evaluation, or educational placement of a student with a disability, or the provision of FAPE to the student. *See* 34 C.F.R. § 300.507(a). The complaint must allege a violation that occurred no more than two years before the

date the parent knew, or should have known about the alleged action that forms the basis of the complaint. *Id* at (a)(2). The rules go on to note that exceptions to this two-year window for filing due process claims will apply in two specific instances: 1) when parents are prevented from filing due process complaints due to specific misrepresentation by a school district or 2) in instances when the district withholds information from parents, that is required to be provided, under this part of the IDEA. *See* 34 C.F.R § 300.511(f).

Therefore, in this case, District is correct that the Parent's allegations that fall outside of the two-year filing window for IDEA claims may not be heard in this matter, due to the applicable state and federal statute of limitations.

While the District was able to present many viable legal arguments in its Motion, the Parent was able to illustrate many questions of fact related to substantive areas of the IDEA, that do fall within the two-year window of September 23, 2022-September 23, 2024. Specifically, the Parent argued in both the complaint that was filed with the Vermont Agency of Education and in their response to the District's motion that the IEP team meeting that convened in summer of 2024 was not procedurally compliant with IDEA, in that a general education teacher did not attend the meeting. The Parent argued that the District failed to evaluate the Student for a suspected learning disability, dyslexia, and that the District failed to provide any special education during the past two years. The Parent also argued no IEP was in effect for the Student at the start of the 2024-2025 school year. Finally, the Parent argued that no District representative attended the September 2024 IEP team meeting. These matters are all timely and explicitly covered by the IDEA, so they may be appropriately addressed in an IDEA Due Process Hearing.

Next, the District is correct that a number of allegations in the Parent's complaint are not included in the subject matter of IDEA or its implementing state regulations for Vermont. Specifically, the Parent's claims that the District failed to use specific evaluators demanded by the Parent, the allegation that the Student's General Education Google Classroom materials were archived by the District and inaccessible during the Student's suspension, reports of the Student having a gun at school, complaints about the police coming into the family home to search for firearms, complaints about forced psychological evaluations for the Student to attend District schools, and claims about expulsion and discipline for the Student's knife and general education disciplinary behaviors at school. These matters are all not included in the IDEA and may not be addressed via the IDEA due process hearing as they do not relate to the Student's identification, evaluation, special

education eligibility, or provision of FAPE. While these may be viable claims in other forums, they are not within the jurisdiction of this hearing officer.

Finally, the District is correct that IDEA does not permit cash damages for negligence and “pain and suffering” awards such as the amount of \$900,000 that the parents requested for themselves and the Student. IDEA does not make cash awards for parents and their children as an available remedy. IDEA also does not cover employee matters such as specific staff resignations, punishment for “false reporters,” or the required use of or updates to school security cameras. Rather, IDEA damages are meant to ensure that districts follow a discreet set of state and federal special education laws and that eligible children receive the necessary supports and services that they need, in order to access a FAPE. As such, these are the only remedies that will be discussed and contemplated in the IDEA due process hearing.

## CONCLUSION

The factual matters related to the legal claims noted above, specifically: 1) Was the IEP team meeting in the summer of 2024 procedurally and substantively compliant with respect to IEP team members; 2) Did District fail to find and evaluate the Student and fail to provide services under IDEA during the two-year time frame; and 3) Did the District fail to provide the Student FAPE by not having an IEP in effect for him at the start of school in 2024, may be argued in the Due Process hearing.

Matters beyond the two-year statute of limitations may not be included in the hearing. Likewise, matters not included in the IDEA regulations and laws will not be covered in the IDEA due process hearing.

The only remedies available for this matter shall be those that pertain to equitable relief for the Student, as related to any applicable IDEA rights.

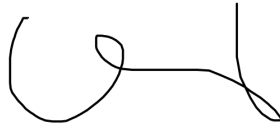
## ORDER

The District’s Motion to Dismiss is hereby GRANTED IN PART and all allegations that precede September 23, 2022 are hereby DISMISSED.

The IDEA allegations from September 23, 2022-September 23, 2024 shall be heard in the due process hearing and clarified in the prehearing conference call.

All non-IDEA allegations, as detailed above, are hereby DISMISSED.

Dated this 21<sup>st</sup> day of October 2024.

A handwritten signature in black ink, appearing to be 'CR', written in a cursive style.

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Claudette Rushing, Independent Hearing Officer