

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: J. M.

Date of Birth: [redacted]

CLOSED HEARING

ODR Case # 15036-1314KE

Parties to the Hearing:

Parent[s]

School District of Philadelphia
Office of General Counsel
440 N Broad Street, Suite 313
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

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June 20, 2014

June 20, 2014

William Culleton, Esquire

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

IN RE: THE EDUCATIONAL ASSIGNMENT OF
JM

A RESIDENT OF THE SCHOOL DISTRICT OF PHILADELPHIA
ODR FILE NUMBER 15036-13-14-KE

MEMORANDUM AND FINAL ORDER OF THE HEARING OFFICER
ON LOCAL EDUCATION AGENCY MOTIONS TO DISMISS AND CONSOLIDATE
THE MATTER WITH ODR NUMBER 15039

MEMORANDUM

This is a due process request by the Parent of the above captioned Student regarding the provision of special education services to the Student by the School District of Philadelphia (District). The complaint consists of an ODR form for Complaint Notice, with an attached statement in pleading form. The complaint names multiple parties in the same document. One of the respondents is the School District of Philadelphia, and another respondent is [a Second] School District¹.

The Student, a resident of the District, was placed by a social service agency at a residential treatment facility and allegedly was admitted there in the Fall of 2013. This facility is located within another school district, the [Second] School District. Parent alleged that both districts failed to provide a free appropriate public education (FAPE).

The District moved to dismiss, arguing that state law places the responsibility for educational planning and services upon the district in which a residential placement is located, thus absolving the District of responsibility and liability for the period during which Student was located at the residential treatment facility. The Parent responded by withdrawing all claims against the District for the period of time in which Student was in the residential treatment facility. However, Parent continues to oppose the motion, arguing that the complaint nevertheless alleges failures of the District during the period prior to the Student's admission to the treatment facility.

¹ An intermediate unit is also named; however, the intermediate unit is not implicated in the pending motion. All claims against [Second] School District have been settled and the due process complaints against [it] and the respondent Intermediate Unit have been withdrawn.

The District argues strenuously that the complaint cannot be read reasonably to allege any violation prior to the Student's placement at the treatment facility. I conclude that the pleading cannot be read reasonably as Parent suggests and I dismiss the complaint.²

RELEVANT LANGUAGE IN THE PLEADING

The Parent, through counsel, filled in the standard ODR form, including a brief statement of the problem and facts about the problem:

LEA has denied student appropriate education since [Student's] placement at [residential facility]. LEA violated Student's Stay Put rights by failing to maintain [Student's] placement at [private school] or comparable alternative subsequent to [Student's] medical placement at [residential facility]. LEA continues to delay resuming student's prior educational placement. (emphasis supplied)

In the statement attached to the ODR complaint form, there are allegations regarding failures to provide appropriate services during the time in which Student was located at [residential facility], and there is this additional language:

[The District] has violated [Student's] rights and [Student's] parent's rights In particular, the [District] has:

- (a) Denied[Student] a free appropriate public education ... by failing to establish meaningful and measurable academic goals and ensure appropriate services by notifying [redacted]that [Student's] educational placement was [private school] and requesting that placement to continue;
- (b) failed to monitor and to ensure that [Student's] placement at [private school] was maintained through an IEP, and progress reports so that same would be available to [Student's] IEP team. (emphasis supplied)

The remaining allegations pertaining to the District are conclusory and shed no light on the question raised in the pending motion. However, the prayer for relief section of the complaint includes the following requests:

1. Determine that the [District] has denied [Student] a free appropriate public education ... by failing to ensure [Student's] program was maintained at [private school] notwithstanding [Student's] residential placement, and to ensure an IEP and progress reports from there.

² Previously, I denied a sufficiency challenge, based upon the minimal pleading standards of the IDEA; however, a sufficiency challenge and determination does not insulate from scrutiny any and all interpretations that the pleading party may assert later regarding the complaint. Regardless of sufficiency, a party may not have a due process hearing on issues not raised in the complaint. 20 U.S.C. 1415(b)(7)(B); 1415(f)(3)(B). While the sufficiency determination in this matter identified at least one issue with regard to which the complaint was sufficient, it was not intended to give carte blanche to the Parent to proceed with any conceivable issue. Ibid.

3. Determine that the [District] and [Second District and IU] have wrongfully excluded [Parent] from a lawfully constituted IEP team process, instead eliminating without same, [Student's] educational placement at [private school] or a comparable program and placement.

5. Order that the Districts shall provide [Student] with compensatory education for [Student's] lack of appropriate services during [Student's] residential stay at [residential treatment program]. (emphasis supplied)

None of the other requests for relief are pertinent to the present motion.

CONCLUSIONS OF LAW

I decide this motion to dismiss under the federal standard for motions to dismiss for failure to state a claim, Fed. R. Civ. P. 12(b)(6). Under that rule, I must read the pleading liberally in favor of the non-moving party, in this case the Parent. I must take all reasonable inferences in favor of Parent, based upon the language of the complaint.

Under this standard, I conclude that the complaint cannot be read reasonably to allege that the District failed to provide appropriate educational services during the period prior to the admission of Student to the treatment facility. The allegation on the ODR form plainly limits the scope of the allegations to the time beginning with Student's admission to the residential facility, and the request for compensatory education – the only request for retrospective relief against the District in the complaint – plainly is limited to the time period when Student was in the residential placement. Read with these book-end limitations of the claim, it is not reasonable to suggest that some ambiguous language in one or two other allegations somehow negates the plain limits set forth at the beginning and at the end of the complaint. Therefore, the complaint must be read as asserting a limited set of claims that do not include claims for District action or inaction prior to the Student's placement in the residential treatment facility.

In consequence, Parent cannot have a due process hearing, based upon this complaint, on putative claims for the period before Student's admission to the residential treatment facility. 20 U.S.C. 1415(b)(7)(B); 1415(f)(3)(B). The District's motion to dismiss therefore will be granted. In light of this decision, the motion to consolidate the above captioned matter with the now closed matter against [the second district] is moot.

ORDER

In accordance with the foregoing conclusions, it is hereby **ORDERED** that the District's motion to dismiss the complaint captioned above is **GRANTED**, and the above captioned matter is **DISMISSED**.

It is further **ORDERED** that the District's motion to consolidate is **DENIED** as moot.

It is further **ORDERED** that the undersigned hearing officer hereby relinquishes jurisdiction of the above matter.

It is further **ORDERED** that any claims that are encompassed in the captioned matter and not specifically addressed by this decision and order are denied and dismissed.

DATED: June 20, 2014

William F. Culleton, Jr. Esq.

WILLIAM F. CULLETON, JR., ESQ.
HEARING OFFICER