

While their appeal of ALJ Scase's decision was pending in federal district court, the Complainants filed a second due process complaint with the Iowa Department of Education on August 7, 2013. This complaint alleged that the IEP offered by the Respondents on July 30, 2013 for the 2013-14 school year did not provide for meaningful educational benefit in terms of the specially designed instruction [B.] needed for his post-secondary goals. The sole remedy proposed was that CSD pay the costs of [B.'s] educational placement at []. On May 22, 2014, this complaint was dismissed because [B.] was not a resident of the CSD during the 2013-14 school year, making the claim for relief based on the alleged inadequacy of the IEP for the 2013-14 school year (which was the sole basis for relief) moot.

On July 31, 2015, the Complainants filed a third due process complaint with the Iowa Department of Education, which is the instant action. This complaint alleges that, from the fall of 2010 through July 30, 2013, the Respondents violated [B.'s] rights under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

The remedies sought in the latest complaint are compensatory education for [B.] and reimbursement to the Complainants for all costs incurred by them after July 30, 2013 in relation to [B.'s] enrollment in an alternative education placement.

On or about August 24, 2015, the Respondents filed a motion to dismiss, alleging the following:

- The substantive claims raised in the present due process complaint are barred as having been addressed by ALJ Scase in her decision regarding the first due process complaint and in her order dismissing the second due process complaint.
- [B.] is no longer a resident of the Respondent school district and area education agency.
- The alleged violations are barred by the two year statute of limitations.
- The Complainants lack standing to raise claims in [B.'s] name inasmuch as [B.] has been an adult since [] 2014.
- The Iowa Department of Education has no jurisdiction over the Complainants' Section 504 and ADA claims.

No response to the motion to dismiss has been received from the Complainants.

Findings of Fact

Complainants are the biological parents of [B.D.], who was born in [] of 1996. Thus, [B.] was 19 years old when his parents filed the complaint initiating this instant action. [B.] moved from the CSD, his school district of residence, to [] in the summer of 2012. After attending high school at CSD for his freshman and sophomore years (2010-12), [B.'s] parents unilaterally enrolled him in the [], a non-residential treatment facility in [], for the 2012-13 and 2013-14 school years.

ALJ Scase found that [] implements the Arrowsmith Program, a program built upon the concept of neuroplasticity with the focus on building cognitive capacity. The [] did not maintain a full complement of secondary school courses. At the time of her decision, ALJ Scase found that [B.] had engaged in no academic coursework at the academy during the first half of the 2012-13 school year with the exception of a single chemistry course. From the allegations in the current complaint, it appears that [B.] does not yet have a high school diploma, although his peers would have graduated from CSD High School in May 2014.

In her order dismissing the second due process complaint, ALJ Scase found that [B.] has not been a resident of the Respondent district or AEA since the 2012-13 school year.

[B.] is now an independent adult. He has no court-appointed guardian.

Conclusions of Law, Analysis

[Mr. & Mrs. D.] base this action upon Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. 42 U.S.C. § 12131 et seq.; 29 U.S.C. § 794.

The dispositive basis of the Respondents' motion to dismiss is that the Iowa Department of Education has no jurisdiction over the present claims. It is not necessary to analyze any of the other bases in the motion.

A state department of education (SEA) has no jurisdiction over alleged violations of Title II of the ADA and Section 504 of the Rehabilitation Act. Unlike the IDEA, these are civil rights statutes. The IDEA is a funding statute, and specifically confers jurisdiction over alleged violations of that statute to SEAs. No such jurisdiction is conferred to SEAs under Title II of the ADA or Section 504 of the Rehabilitation Act. *See, e.g., Sher v. Upper Moreland Tp. School Dist.*, 2012 WL 6731260 (E.D. Pa. 2012) (noting that while the remedies are similar among the three statutes, the statutory language of Section 504 and the ADA precludes claims against school districts and area education agencies filed with SEAs.)

In *J.B. ex rel. Bailey v. Avilla R-XIII School Dist.*, 721 F.3d 588 (8th Cir. 2013), the Eighth Circuit Court of Appeals required the parent to first exhaust claims under the IDEA because they sought compensatory education and reimbursement as part of their relief. [Mr. & Mrs. D.] have exhausted their IDEA remedies. It may be that they believed they needed to also file their current due process complaint as a prerequisite to going further with their claims under Section 504 and the ADA. If so, this ruling will come as no surprise to them.

The Respondents ask also that this tribunal address their obligation to provide a resolution process as required by 281—Iowa Administrative Code 41.510. Inasmuch as the instant complaint does not allege a violation of the IDEA, rule 41.510 is not implicated.

Order

1. The Complainants' third due process complaint, filed with the Iowa Department of Education on July 31, 2015, is dismissed in its entirety.
2. The Respondents have no obligation to provide a resolution process to the Complainants.

Issued this 23rd day of September, 2015.



Carol J. Greta
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building- 3rd Floor
Des Moines, Iowa 50319
Telephone: (515)281-6065
carol.greta@dia.iowa.gov

Copies via email to:

Complainants

Mikkie R. Schiltz, Attorney for the Respondents

Julie Carmer, Iowa Department of Education