BEFORE THE IOWA DEPARTMENT OF EDUCATION
(Cite as 29 D.o.E. App. Dec. 251)

In re [redacted], [redacted] and [redacted], Complainants, v. [redacted] COMMUNITY SCHOOL DISTRICT and [redacted] AREA EDUCATION AGENCY, Respondents.	Dep't Ed. Docket No. SE-500 DIA No. 19DOESE0021 **ORDER GRANTING RESPONDENTS' MOTION TO DISMISS**

The above-captioned complaint was filed on or about May 8, 2019. The Complaint alleges that the [redacted] Community School District (the District) and the [redacted] Area Education Agency ([redacted]) failed to provide a free appropriate public education as required by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1420, *et seq.*

The Respondents filed the present motion to dismiss on September 27, 2019. The Complainants resisted the motion on October 25, 2019, and the Respondents filed a reply brief on November 8, 2019. Oral argument was heard by telephonic hearing on November 21, 2019. The motion is fully submitted.

FACTUAL ALLEGATIONS

[redacted] is an [redacted] year-old woman diagnosed with Rett Syndrome, a neurological disorder that impacts her coordination and motor control, speech, swallowing and general neurological functioning. [redacted] also suffers from epileptic seizures. She is considered to be intellectually disabled, although this may be attributed to her severe communication impairment and the inability of standardized testing to account for this impairment.

[redacted] previously has been determined to be eligible for special education services under the IDEA categories of "other health impaired," and "orthopedic impairment." Beginning in 2009, while [redacted] and her family resided in [redacted], the [redacted] School District and [redacted] individualized education plan (IEP) team agreed to place her at [redacted] Residential School [redacted] in [redacted], [redacted].

[redacted] moved to [redacted], Iowa in July 2017, where her father had accepted employment. She was formally enrolled in the Respondent District at some point thereafter. The Respondent District declined to continue [redacted] residential placement at [redacted].

Due to [redacted] extensive medical needs, the family agreed to a temporary residential placement in the transitional care unit of [redacted] in [redacted], Iowa. While at [redacted], [redacted] attended day classes through the [redacted] Community School District. [redacted] regressed both physically and academically during this time period.

In August 2018, [redacted] mother moved with [redacted] back to [redacted], and re-enrolled [redacted] in the [redacted] School District. Her [redacted] IEP team subsequently renewed [redacted] placement at [redacted]. [redacted] father and her two sisters have resided in [redacted], Iowa throughout the relevant time period, and continue to reside in [redacted] to date.

[redacted] parents filed the present due process complaint on May 8, 2019. The complaint seeks both compensatory and prospective relief as follows: 1) reimbursement of parent educational expenses; 2) compensatory assistive technology devices and services; 3) attorney fees; and 4) residential placement at [redacted] through June 2022.

CONCLUSIONS OF LAW AND DISCUSSION

A. Governing Law

As set forth above, the Complainants brought the present due process complaint pursuant to the IDEA, as implemented by 281 Iowa Administrative Code chapter 41. The applicable regulations provide that a request or motion to dismiss made by the appellee, or respondent party, *shall* be granted if an administrative law judge (ALJ) determines that any of the following applies:

> a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.
> b. The issue(s) raised is moot.
> c. The individual does not have standing to file a due process complaint under Part B of the Act and this chapter.
> d. The relief sought by the appellant [complainant] is beyond the scope and authority of the administrative law judge to provide.
> e. Circumstances are such that no case or controversy exists between the parties.

Iowa Admin. Code r. 281-41.1003(7) (emphasis added). In reviewing a motion to dismiss, the relevant facts set forth in the complaint are construed to be true. *See, e.g., Thompson v. Board of Special School Dist. No. 1*, 144 F.3d 574, 578 (8th Cir. 1998). Dismissal is appropriate only if it appears the Complainants are "unable to prove any set of facts" entitling them to relief. *Id.*

B. Whether Complainants' Claim for Prospective Relief is Moot

The Complainants' prayer for relief requests in part that the Respondents place [redacted] at [redacted] for the remainder of the current school year, and maintain her placement until June 2022--the end of the academic year during which she turns [redacted] years of age. This request necessarily depends upon a finding that the Respondents have a current and prospective duty to provide [redacted] FAPE.

Respondents contend the Complainants' request for prospective relief is moot, because [redacted] now resides in a new school district that has assumed responsibility for providing her FAPE. The Complainants disagree, arguing that [redacted] may be viewed as a "resident" of the District because her father resides in the District. They also assert they have a right to request and challenge an IEP regardless of whether [redacted] currently is enrolled in the District.

Congress enacted the IDEA to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, the duty to provide FAPE is placed upon the State in which the child—defined as between ages 3 and 21--resides. *Id.*, § 1412(a)(1); *see also* 34 C.F.R. § 300.201 (requiring the local education agency (LEA) to provide FAPE to children with disabilities "within its jurisdiction"). Under the corresponding Iowa statute, a school district is responsible for providing FAPE to "children who *reside* in that district . . . ." Iowa Code § 256B.2(4) (emphasis added).

The IDEA does not define either "residency" or local school jurisdiction. "[T]he IDEA nowhere purports to allocate financial liability among the multitude of school districts housed within the fifty states." *Manchester School Dist. v. Crisman*, 306 F.3d 1, 10 (1st Cir. 2002). Rather, the IDEA "leaves the assignment and allocation of financial responsibility for special education cost of local school districts to each individual state's legislature." *Id.*

In the context of public school enrollment, "resident" is defined in the Iowa Code as:

> a child who is physically present in a district, *whose residence has not been established in another district by operation of law, and* who meets any of the following conditions:
>
> a. Is in the district for purposes of making a home and not solely for school purposes.
> b. Meets the definitional requirements of the term "homeless individual" under 42 U.S.C. § 11302(1) and (c).

c. Lives in a juvenile detention center or residential facility in the district.

Iowa Code § 282.1(2) (emphasis added).

Accepting as true the allegations of the complaint, both [redacted] and her mother physically have resided in [redacted] since August 2018. The first page of the complaint identifies [redacted] state of residence as [redacted]. Complainants conceded during the hearing and in briefing that the [redacted] school district has assumed responsibility for [redacted] FAPE. Because [redacted] is not physically present in the Respondent District and has established her residence for school purposes in [redacted], she therefore falls outside the statutory definition of "resident" as a matter of law. Iowa Code § 282.1(2).

The Complainants argue that because one of her parents--her father--resides in the District she is entitled to *dual* residency in both [redacted] and the Respondent District under Iowa Rule of Administrative Procedure 281.41.51(12). Specifically, they assert that under this regulation, the "school district of the child's residence" is defined as the district "in which the parent of the individual resides." Because [redacted] and her mother re-established residency in [redacted] solely for the purpose of school attendance, Complainants argue [redacted] circumstance falls within subsection (b) of the regulation, which provides in relevant part: "If an eligible individual is physically present ("lives") in a district other than the district of residence of the individual's parent solely for the purpose of school attendance, the district of residence remains that of the parent." Iowa Admin. Code r. 281.41.51(12)"b."

The Complainants have failed to consider the subsection in context. A review of the remaining portion of this subsection—which states that the "parent must pay tuition to the receiving district"--confirms that this subsection was intended to govern situations in which a child lives within the boundaries of one Iowa school district but attends school in another *Iowa* district. *Id.* Regardless, the Complainants' argument also ignores the fact that Ms. [redacted]—one of [redacted] parents--changed her residence along with her [redacted].

The Complainants also cite to a number of cases for the premise that a student does not need to be "enrolled" in the public school district of residence in order to be entitled to an IEP. *See, e.g., James v. Upper Arlington City Sch. Dist.*, 228 F.3d 764, 768 (6th Cir. 2000) ("The obligation to deal with a child in need of services, and to prepare an IEP, derives from residence in the district, not from enrollment."). Notably, however, in each of the cases cited by the Respondents, the student never established *residence* in another public school district. Cases evaluating a public school district's continuing obligation to offer FAPE to students residing within its district following unilateral

placement in an out-of-district school are irrelevant to the present scenario. Rather, from August 2018 to date, [redacted] had established legal residence within the boundaries of *another* public school district, which itself had assumed responsibility for providing FAPE.

Although not controlling law, at least one ALJ in Iowa has considered the precise issue at bar and concluded that once the student changed his residence and enrolled in an out-of-state public school district, any FAPE claim against his former district for the current school year became moot. *In re: G.L.*, SE-391 at 896-99, DIA No. 13DOESE004, Order Dismissing Complaint (May 22, 2014). In doing so, the ALJ expressly rejected the same argument raised by the Complainants in the present case—that the mother and the student moved to the transferee state simply because the Iowa district failed to provide FAPE. The ALJ noted that the complainants had confused "residency" with "domicile," and reaffirmed that for purposes of school attendance, "residence" is based on the district in which a student "'[is] in fact residing.'" *Id.* at 897 (quoting *Lakota Consolidated Ind. Sch. v. Buffalo Center/Rake Comm. Schs.*, 334 N.W.2d 704, 709 (Iowa 1983) (interpreting prior version of Iowa Code § 282.1)). There is no material basis on which to distinquish the facts of *G.L.* from the facts of the present case.

In summary, full responsibility for providing FAPE transferred to the [redacted] School District in August 2018 once [redacted] was re-enrolled in that school district. Any non-pending claims against the Respondents for prospective relief became moot. Notably, however, if [redacted] and her mother return to Iowa and the Complainants enroll [redacted] in the District, [redacted] once again will be entitled to FAPE and other safeguards through the District and [redacted].

C. Whether Complainants' Claim for Compensatory Relief is Moot

In addition to prospective relief, the Complainants also seek *compensatory* relief in the form of reimbursement for educational expenses incurred by the Complainants, compensatory assistive technology and devices, and attorney fees. This request is based on the Respondents' alleged failure to provide FAPE during the 2017-2018 school year.

The Respondents argue the request for compensatory relief also is moot because the Complainants failed to preserve their claim by filing their due process complaint before moving [redacted] from the Respondent District. In *Thompson*, the Eighth Circuit Court of Appeals affirmed the district court's dismissal of an IDEA claim based on the fact the child had left the school district prior to the filing of a due process complaint. As held by the court: "If a student changes school districts and does not request a due process hearing, his or her right to challenge prior educational services is not preserved." *Thompson*, 144 F.3d at 579.[1]

[1] Contrary to the Complainant's argument, the United States Supreme Court's decision in *Forest Grove Sch. Dist. v. T. A.*, 557 U.S. 230 (2009) did not overrule *Thompson*. Rather, at issue in *Forest Grove* was whether parents could recover tuition

Although courts outside the Eighth Circuit have declined to follow *Thompson*, the decision remains binding law within this Circuit.[2] *See, e.g., Barron ex rel. D.B. v. South Dakota Bd. of Regents*, 655 F.3d 787, 790 n. 2 (8th Cir. 2011) (agreeing with district court that any claims brought on behalf of students who had left district before due process hearings were requested were moot); *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624 (8th Cir. 2009) (affirming dismissal of due process complaint under *Thompson* when complainant did not request hearing until after enrolling in a new public school district); *M.P. v. Indep. Sch. Dist. No. 721*, 326 F.3d 975 (8th Cir. 2003) (applying *Thompson* and finding that IDEA claim for compensatory relief was moot when claim filed after student had open-enrolled into new public school district, even though his residence did not change); *R.M.M. v. Minneapolis Pub. Sch.*, No. 15-CV-1627, 2016 WL 475171, at *10 ("Despite [the complainant's] arguments for overturning *Thompson*, the Eighth Circuit's opinion in that case is binding on this Court."); *I.E.C. v. Minneapolis Public Schs., Special Sch. Dist. No. 1*, 34 F. Supp.3d 1006, 1016 (D. Minn. 2014) ("The Court need not assess Plaintiff's Thompson arguments any further. The Court is bound by *Thompson*, its holding is straightforward and it squarely applies to the present case.")

The Complainants attempt to distinguish *Thompson* on two grounds. First, at the time *Thompson* was decided, the applicable Minnesota statute required that a due process hearing be "initiated and conducted by and in the school district responsible for assuring that an appropriate program is provided." *Thompson* v. Board of Special Sch. Dist. No. 1, 936 F. Supp. 644, 648 (D. Minn. 1996) (citing Minn. St. Ann. § 120.17 subd. 3b(e)(1)-(5)). The Complainants note that the corresponding Iowa regulation does not require that the due process hearing be conducted within the district. *See* Iowa Admin. Code r. 281-41.507(1)"b."

Secondly, the Complainants argue that the *Thompson* court explained the rationale for its holding in part on the need to place the school district "on notice of a perceived problem" and provide the district with an opportunity to correct the alleged deficiencies. *See Thompson*, 144 F.3d at 579. According to the Complainants, because the

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reimbursement from the public school district *of residence* following unilateral private school placement. *Id.* at 234.

[2] *See, e.g., C.Z. v. Cmty. Sch. Dist. And Northwest Area Educ. Agency*, SE-393, at 886-87 n.3, 13DOESE008, Order Granting Motion for Summary Judgment and Dismissing Complaint (May 19, 2014) (noting: "A number of federal district courts have disagreed with this line of cases and have held that a parent may maintain an IDEA due process claim seeking compensatory relief against a former school district."); *but see Lomax v. District of Columbia*, 896 F. Supp.2d 69, 81-83 (D.D.C. 2012) ("the majority of federal district courts to consider this issue have concluded that when a student leaves a school district, which allegedly failed to provide a FAPE, the school district may not avoid its obligations under the IDEA and must provide a due process hearing to consider the issue of compensatory education"). As noted by the ALJ in *C.Z.*: "Iowa is in the Eighth Circuit and cases from that court are controlling precedent for interpretation of the IDEA in this state." SE-393, at 887.

Respondent District in the present case had notice of the Complainants' concerns both through multiple meetings, correspondence and even a prior due process complaint filed and dismissed by the parents, the *Thompson* rule should not be applied to bar their complaint.[3]

As noted by the Respondents, however, the *Thompson* court did not condition its holding on the Minnesota statute. Nor did it suggest future courts should engage in a factual analysis to determine whether a district was sufficiently on notice of a claim before a student dis-enrolled. Rather, it chose to recite a bright line rule: "If a student changes school districts and does not request a due process hearing, his or her right to challenge prior educational services is not preserved." *Thompson*, 144 F.3d at 579.

Additionally, Minnesota law was amended in 2008 to require the State to conduct due process hearings, rather than each individual school district. *See* Minn. Stat. Ann. § 125A.091 ("A parent or a district is entitled to an impartial due process hearing conducted by the state . . . ."). The *Thompson* rule has not been impacted by this change. Rather, courts within this circuit, including the Eighth Circuit itself in *C.N.*, have continued to apply *Thompson* even after the Minnesota statute was changed. *C.N.*, 591 F.3d at 631; *R.M.M.*, 2016 WL 475171 at *10; *I.E.C.*, 34 F. Supp.3d at 1016.

The facts are undisputed in the present case that [redacted] parents dis-enrolled her from the Respondent district and re-enrolled her in the [redacted] School District in August 2018. The present complaint was not filed until May 8, 2019. Following *Thompson*, any claim for compensatory relief became moot at the time she changed districts.

[3] The Complainants' claim cannot be saved by the fact they filed an earlier due process complaint, which was dismissed at the Complainants' request in May 2018. *See, e.g., Lawson v. Kurtzhals*, 792 N.W.2d 251, 255 n.2 ("After voluntary dismissal, the case is considered 'nonexistent' and the matter usually deemed 'unreviewable.'") (internal citations and quotations omitted).

ORDER

[redacted] no longer was an Iowa resident, and had been dis-enrolled from the District and re-enrolled in another public school district on the date the Complainants filed the present complaint. Accordingly, all claims for relief related to the alleged past and present failure of the Respondent [redacted] Community School District and the [redacted] Area Education Agency to provide FAPE are moot. This proceeding therefore is **DISMISSED** in its entirety.

Dated this 3rd day of December, 2019.

Carla J. Hamborg
Administrative Law Judge

cc: Judith Gran (via email and U.S. mail)
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