

BEFORE THE IOWA DEPARTMENT OF EDUCATION  
(30 D.o.E. App. 054 )

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ERIC and CHRISTINE HENELY,	)	Dept. Ed. Docket No. 5135
	)	DIA No. 21DOE0003
Complainant,	)	
	)	
v.	)	
	)	
THE GILBERT COMMUNITY SCHOOL	)	
DISTRICT,	)	<b>ORDER GRANTING</b>
	)	<b>MOTION TO DISMISS</b>
Respondents.	)	

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This matter comes before Rachel Morgan, designated administrative law judge with the Iowa Department of Inspections and Appeals Division of Administrative Hearings. In December 2020, the Gilbert Community School District (School District) filed a Motion to Dismiss the above-captioned appeal. On or about December 31, 2020, the Complainants filed a Response to the School District's Motion to Dismiss. For the reasons stated below, the School District's Motion to Dismiss is granted.

**PROCEDURAL AND FACTUAL BACKGROUND**

This appeal arises out of the Gilbert Intermediate School Principal's September 20, 2019 decision to allow the Complainants to audio record, not video record, their son's IEP meeting. On November 27, 2020, the Complainants sent a letter to the Gilbert County School Board (School Board) President Andrew Ricklefs and Superintendent Lindsey Beecher stating that the School District violated their Constitutional rights under the First and Fourteenth Amendment because the School District permitted IEP meetings to be audio recorded but not video recorded. On December 10, 2020, School Board President Ricklefs emailed Complainants informing them that the school administration acted appropriately and the School Board would not take any action on their complaint.

On December 11, 2020, the Complainants filed this appeal seeking an order requiring the School District to allow Complainants to take video recordings of meetings they have with school staff, including IEP meetings.

The School District subsequently filed a Motion to Dismiss the appeal on the grounds that the State Board of Education (State Board) does not have jurisdiction to hear the appeal because there was no decision by the School Board. Specifically, the School District argues that because the School Board decided to take no action on the Complaint's complaint, there is no action by the School Board for the State Board to review.

On December 31, 2020, the Complainants filed a resistance to the School District's Motion to Dismiss. The Complainants argue that the School Board violated their constitutional rights and the School Board must take action if there is a violation of a constitutional right.

On January 25, 2021, a hearing was held and oral arguments were heard regarding the School District's Motion to Dismiss. The matter is now fully submitted.

### DISCUSSION

The Iowa Rules of Civil Procedure permit a party to file a motion to dismiss a petition to admit the "pleaded facts in the petition for the purpose of testing their legal sufficiency." *Herbst v. Treinen*, 88 N.W.2d 820, 823 (1958); Iowa Rule of Civil Procedure 1.421. In reviewing the propriety of such motions, the Iowa Supreme Court has held:

A court should grant a motion to dismiss if the petition fails to state a claim upon which any relief may be granted. In considering a motion to dismiss, the court considers all well-pleaded facts to be true. A court should grant a motion to dismiss only if the petition on its face shows no right of recovery under any state of facts. Nearly every case will survive a motion to dismiss under notice pleading.

*U.S. Bank v. Barbour*, 770 N.W.2d 350, 353–54 (Iowa 2009) (internal quotation marks and citations omitted). Importantly, "At issue is [a party's] right of access to . . . court, not the merits of his allegations," as "[a]t this stage of the litigation[,] no question is presented as to truth of the allegations contained in the challenged pleading. The sole issue is whether [parties] are entitled to their day in court." *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (internal citations and quotation marks omitted).

In this case, the School Board's motion to dismiss raises a purely legal issue – whether the State Board has jurisdiction to hear this case. The School District argues there was no decision by the School Board as required under Iowa Code section 290.1 because the School Board never acted on the complaint and never issued a decision.

It is fundamental law that an administrative agency only has jurisdiction and authority as expressly conferred by statute or necessarily inferred from the power expressly granted. *Northwestern Bell Telephone Co. v. Iowa Utilities Bd.*, 477 N.W.2d 6788, 682 (Iowa 1991). In this case, the State Board obtains its jurisdictional authority from Iowa Code section 290.1 which provides as follows:

An affected pupil, or the parent or guardian of an affected pupil who is a minor, who is aggrieved *by a decision or order the board of directors of a school corporation* in a matter of law or fact . . . may, within thirty days after the rendition of the decision or the making of the order, appeal the decision or order to the state board of education; the basis of the proceedings shall be an affidavit filed with the state board by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

(Emphasis added). Iowa Code section 290.1 expressly requires that, in order for the State Board to exercise jurisdiction, the action appealed must be a "decision or order" by the directors of a school corporation, or school board.

At the hearing on the motion to dismiss, Complainants acknowledged that the School Board did not take any action in connection with their complaint and no decision was ever issued by the School Board. Therefore, there is no decision by the "board of directors of a school corporation" for the State Board to review.

Although the Complainants admit that there was no decision by the School Board, the Complainants argue that the School Board had an obligation to act on their complaint and the School Board's failure to act is grounds for this appeal. The Complainant's argument fails for the following reasons.

Under Iowa Code section 279.8, a local school board "shall make rules for its own government and that of the . . . pupils . . . and shall aid in the enforcement of the rules, and require the performance of duties imposed by laws and rules." Pursuant to the above, the School District enacted the following policy regarding public complaints:

It is within the discretion of the board to address complaints from the members of the school district community, and the board will only consider whether to address complaints if they are in writing, signed, and the complainant has complied with this policy. The board is not obligated to address a complaint and may defer to the decision of the superintendent. If the board elects not to address a complaint, the decision of the superintendent shall be final. If the board does elect to address a complaint, its decision shall be final.

School District Board Policy 213.1 (Ex. 1). Pursuant to District Policy 210.8, it is the responsibility of the board president and superintendent to set the agenda for board meetings. (Ex. 2).

Here, School Board President Ricklefs determined not to place Complainant's complaint on the agenda for the School Board and the School Board never addressed or took action on the Complainant's complaint. Such action by President Ricklefs complied with the above legal framework and with the School District's policies. There is simply no requirement for the School Board to address every complaint that it receives from parents and other interested parties and the School Board acted within its authority to decline to address Complainant's complaint. Because there was no action, no decision, made by the School Board, there is no jurisdiction for the State Board to hear this appeal.

In sum, Iowa Code section 290.1 expressly limits the State Board's jurisdiction to only matters that have been addressed by a school board, not its designee, including the superintendent and a school principal. In this case, there is no dispute that the School Board did not address or take any action on the Complainant's complaint. Further, there was no obligation under Iowa law or the School District's own policies for the School District to address Complainant's complaint. Accordingly, the State Board has no jurisdiction and the appeal is dismissed.


Dated this 26th day of January, 2021.



Rachel D. Morgan  
Administrative Law Judge

cc: Eric and Christine Henely (via US Mail)  
Carrie Weber, Attorneys for Respondent (via e-mail)  
Lindsey Beecher, Superintendent (via e-mail)  
Cheryl Smith, Department of Education (via e-mail)

3/25/2021  
DATE

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Brooke Miller Axiotis, President  
State Board of Education