



Jl-KY-002-007

EASTERN DISTRICT of KENTUCKY
FILED

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AT COVINGTON
LESLIE G. WHITMER
CLERK, U. S. DISTRICT COURT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

CIVIL ACTION NO. 91-187

JOHN DOE, ET AL

PLAINTIFFS

VS.

OPINION AND ORDER

DON YOUNGER, ET AL

DEFENDANTS

This is a civil rights action brought pursuant to 42 U.S.C. §1983 in which Plaintiffs challenge the constitutionality of the conditions of their confinement at the Kenton County Detention Center in Covington, Kentucky (KCDC). This matter is before the court on the Defendants' motion for summary judgment on education issues (Doc. #543) and Plaintiffs' motion for findings on the education issues (Doc. #540). For the reasons set forth below, Defendants' motion for summary judgment is granted. Plaintiffs' motion for findings is denied.

DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT
ON BASIC EDUCATION ISSUE

Plaintiffs claim Defendants have violated their constitutional rights by failing to provide them with appropriate education programs at KCDC. The court construes Plaintiffs' motion for findings on the education issues as an invitation to the court to establish its own standards for education at the facility. The court must decline this invitation because it has no authority to engage in such an endeavor.

There is no federal constitutional right to an education. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). Whether there is a public education system is left to the states. Once a state commits itself to providing a public education, however, it establishes a property interest which is protected by the Due Process Clause. Goss v. Lopez, 419 U.S. 565, 573-74 (1975).

Section 183 of the Kentucky Constitution requires the Kentucky General Assembly to "provide for an efficient system of common schools throughout the State." In addition, the legislature enacted House Bill 117, which requires the Division of Educational Services of the Department of Juvenile Justice to "ensure that all incarcerated youth be provided appropriate screening and educational programs" as outlined therein. KRS §15A.067(3). Through this legislation, Kentucky has made a voluntary commitment to educate the children of this state, including those who are incarcerated. Therefore, incarcerated youth have a legitimate entitlement to an education program. This entitlement is protected by the Due Process Clause. Goss, 419 U.S. at 574.

State action providing for a public education is not unconstitutional under a substantive due process analysis as long as that action is directed to a legitimate purpose and is rationally related to achieving that purpose. Eva N. v. Brock, 741 F. Supp. 626, 635 (E.D. Ky. 1990), aff'd, 943 F.2d 51 (6th Cir. 1991).

In the case at bar, Defendants have established through the affidavit of Donald Younger that KCDC has two full-time teachers. (Younger Aff. ¶1; Doc #545). This staffing level provides an opportunity for one of the teachers to work with the juveniles in the classroom while the other is able to teach the "keep-aparts" in their individual areas. (Younger Aff. ¶3). The court finds the state has a legitimate interest in formulating and executing its policies for the education of detained juveniles.

Plaintiffs have not produced any evidence to establish that the education programs provided at the facility are in any way deficient. Plaintiffs cite to Peter Leone's 1995 affidavit as their only evidence of deficiencies. Plaintiffs admit that changes have occurred at the facility since the legislature passed House Bill 117, but have not submitted any additional evidence of current deficiencies. Plaintiffs make no claims of a procedural due process violation.

Furthermore, the Eleventh Amendment prohibits a federal court from ordering state officials to conform their conduct to state law. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984). Accordingly, this court does not have the authority to order the Defendants to conform to the mandates of House Bill 117. Because Plaintiffs have failed to submit any evidence of deficiencies in the education programs that evidence a substantive or procedural due process violation, they have failed to establish a viable claim against the Defendants with regard to a basic education program. Accordingly, Defendants are entitled to summary

judgment on the basic education issue.

DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT
ON SPECIAL EDUCATION ISSUE

Plaintiffs allege Defendants have violated The Individuals with Disabilities Education Act (IDEA). The IDEA requires participating states¹ to have "in effect a policy that assures all children with disabilities the right to a free appropriate public education." 20 U.S.C. §1412. An individualized education program ("IEP") is the primary vehicle for delivering the appropriate educational services to a child with a disability. An IEP is a written statement which is prepared for each child with a disability at a meeting with the child's parent or guardian, the child's teacher and a representative of the educational agency. 20 U.S.C. §1401(20). The development of a blanket IEP to be applied to all disabled children would be a violation of the IDEA. A separate IEP must be developed for each child. Id.

Incarceration or detention does not vitiate the right of a child with a disability to a free appropriate public education. To the contrary, the IDEA makes it clear that children with disabilities remain entitled to an appropriate public education while detained. Magyar v. Tucson Unified School District, 958 F. Supp. 1423 (D. AZ 1997); Alexander v. Boyd, 876 F. Supp. 773 (D.S.C. 1995); Donnell v. Illinois State Board of Educ., 829 F. Supp. 1016 (N.D. Ill. 1993). The stated purpose of the IDEA is to

¹The parties do not dispute that Kentucky is a participating state in the IDEA.

provide all children with disabilities a right to an education. There is no exception for incarcerated youth. Id.

The only evidence Plaintiffs present to establish a claim under the IDEA is the affidavit of Mary Salyer. (Doc. #555). Ms. Salyer is the attorney of record for Jeremy Hughes, a juvenile that was detained at KCDC from September 10, 1997 to September 24, 1997. Her affidavit is in reference to this juvenile only. She states that an Admissions and Release Committee (ARC) meeting was not held to consider implementing this juvenile's IEP for 6 days after the facility received the IEP.² She further states that the juvenile was receiving one-on-one instruction from a teacher not qualified in working with emotionally/behaviorally disturbed children. This juvenile ultimately received instruction from a qualified professional, but Ms. Salyer testified it was only for a couple of days. Ms. Salyer does not explain whether the instruction ended because the juvenile was released or because the teacher was unable to continue the instruction.

Generally when a court is reviewing a case brought under the IDEA, it "must determine whether the state has complied with the Act's procedural requirements and whether the IEP is reasonably calculated to enable the child to receive educational benefits." Thomas v. Cincinnati Board of Educ., 918 F.2d 618,624 (6th Cir.

²Defendants have submitted the affidavit of Clara Fister, a teacher at KCDC, stating the ARC meeting was held on the third day after receipt of the IEP. For purposes of this Motion, this court will accept Plaintiffs statement that the meeting was held on the 6th day following receipt of the IEP.

1990) (citing Board of Educ. V. Rowley, 458 U.S. 176, 206 (1982)). The court must review the due process hearing de novo, but must give due weight to the state administrative proceedings in reaching its decision. Id.

Here, Plaintiffs argue Defendants violated the IDEA by failing to hold a timely ARC meeting and providing only limited instruction by a qualified teacher. There are no allegations of any problems with the meeting once it took place or the results reached therein. There is also no indication that Jeremy's complaints were ever reviewed in a state administrative proceeding. Exhaustion of administrative remedies is a necessary prerequisite to filing suit under IDEA. Crocker v. Tennessee Secondary School Athletic Ass'n, 873 F.2d 933 (6th Cir. 1989). Jeremy has not sought administrative review and, thus, his claim is not ripe for review by this court.

Even though the court has no jurisdiction of Jeremy's claims, the court will make certain observations. The only procedural issue is whether the ARC meeting was timely held. In 34 C.F.R. §§ 300 et seq., The Department of Education set forth the regulations it promulgated under the IDEA. In §300.343, the regulations provide: "A meeting to develop an IEP for a child must be held within 30 calendar days of a determination that the child needs special education and related services." 34 C.F.R. § 300.343. The 30 day timeline ensures that there will not be a significant delay in providing the child with the services needed. In addition, in Appendix C to Part 300 - Notice of Interpretation - the Department of Education noted that if a child with a disability has been

receiving special education in one local educational agency and moves to another community, a meeting to develop a new IEP, if necessary, should be held within a short time after the child enrolls in the new local educational agency, normally within one week.

Here, the meeting was held six (6) days after the facility learned of the juvenile's special education needs. This is within both the one week recommendation for children already receiving special education and the 30 day timeline for newly diagnosed children. Accordingly, the meeting was timely held.

Therefore, the court being advised,

IT IS ORDERED as follows:

1. That plaintiffs' motion for findings by the court on the education issues (doc. #540) be, and it is, hereby **denied**;
2. That defendants' motion for summary judgment on the education issues (doc. #543) is granted; and
3. That a separate Judgment will enter concurrently herewith dismissing the education claims.

This 16th day of December, 1997.


WILLIAM O. BERTELSMAN, CHIEF JUDGE