

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

A.H., a Minor, by and through her Grandmother and Next Friend, SANDRA D'AVIS,
Appellant,

v.

INDEPENDENCE SCHOOL DISTRICT,
Respondent.

DOCKET NUMBER WD77837

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 7, 2015

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Robert M. Schieber, Judge

JUDGES

Division Two: Gabbert, P.J., and Ellis and Mitchell, JJ. CONCURRING.

ATTORNEYS

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Attorneys for Respondent.



**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

A.H., a Minor, by and through her)
Grandmother and Next Friend, SANDRA)
D'AVIS,)
)
Appellant,) **OPINION FILED:**
v.) **April 7, 2015**
)
INDEPENDENCE SCHOOL DISTRICT,)
)
Respondent.)

WD77837

Jackson County

Before Division Two Judges: Anthony Rex Gabbert, Presiding Judge, and Joseph M. Ellis and Karen King Mitchell, Judges

Sandra D'Avis is the grandmother and guardian of A.H., a child who was born prematurely and has disabilities. When the Independence School District (District) denied special education services under the Individuals with Disabilities Education Act (IDEA), D'Avis moved A.H. into a private school. D'Avis subsequently filed a due process complaint on behalf of her granddaughter, protesting the denial of services under the IDEA. The hearing panel dismissed the complaint because it was not filed until after A.H. had left the District. D'Avis appeals, arguing that: (1) the Eighth Circuit precedent holding that a party must file a due process complaint prior to leaving the District is incorrect as a matter of law and should be rejected; and (2) even if the Eighth Circuit precedent is applicable, her complaint was not barred because she sought prospective relief in the form of tuition reimbursement and attempted to enforce the District's continuing obligation (even after A.H. left the District) to identify, locate, and evaluate A.H. under the IDEA's "child find" provisions.

AFFIRMED.

Division Two holds:

1. The purpose of the complaint requirement under the IDEA is to put the District on formal notice of the guardian's concern with the education that the child is receiving. When a

complaint is not filed until the child is attending private school, the purpose of the complaint requirement is defeated, requiring dismissal of the complaint.

2. This court's refusal to follow Eighth Circuit precedent mandating dismissal of the complaint when it is not filed prior to the student enrolling in private school would place the hearing panel in an untenable position. The panel would be forced to determine whether it has authority to hear a case based upon actions that a party would take *after* the ruling: filing an appeal in state or federal court.
3. Students voluntarily placed in private school by their guardians do not have an individual right to receive services under the "child find" provision of the IDEA. Rather, the District must spend a proportionate share of federal funds providing special education services to privately placed children with disabilities attending school within the geographical boundaries of the District.
4. The District's "child find" obligation under the IDEA to locate and evaluate all children with disabilities within the District does not create an individual right for private school students to receive services. This requirement is only to ensure an accurate count of private school students requiring services, in order to ensure that an equitable amount of funding is spent to provide services to those children.

Opinion by: Karen King Mitchell, Judge

April 7, 2015

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.