

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

J.P., by his foster mother and next)	
friend,)	
ALISHA OGDEN)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 4:20-CV-00189
)	
BELTON 124 SCHOOL)	
DISTRICT,)	
MISSOURI STATE BOARD OF)	
EDUCATION,)	
DEPARTMENT OF)	
ELEMENTARY AND)	
SECONDARY EDUCATION, and)	
OFFICE OF SPECIAL)	
EDUCATION,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS COUNT II OF PLAINTIFF'S
COMPLAINT UNDER RULE 12(b)(6) AND
REQUEST FOR ORAL ARGUMENT**

The Missouri State Board of Education (MSBE), Department of Elementary and Secondary Education (DESE), and Office of Special Education (OSE) (collectively State Defendants) bring this Rule 12(b)(6) Motion to Dismiss Count II of Plaintiffs' Complaint along with Suggestions in Support. Under Local Rule 7.0(e), State Defendants respectfully request the opportunity for oral argument on this Motion.

Plaintiffs bring this Complaint under both the IDEA and the ADA. Count I, the IDEA claim, is brought against the Belton School District. Complaint, p. 15; ¶¶ 72-75. Count II, the ADA claim, is brought against the State Defendants. Complaint, p. 15-16; ¶¶ 76-82.

State Defendants file this Motion to Dismiss Count II under Rule 12(b)(6) and assert that Plaintiffs have failed to state a claim upon which relief can be granted.

Under Rule 12(a)(1), a responsive pleading must be filed within 21 days after the party is served with the complaint. The Complaint was served upon State Defendants on April 13, 2020. This Motion to Dismiss is timely filed under Rule 12(a)(1).

WHEREFORE, based on this Motion and Suggestions in Support, State Defendants respectfully request that this Court:

- 1) Dismiss Count II of this Complaint;
- 2) Dismiss State Defendants from the Complaint because the Plaintiffs' IDEA claim does not seek relief from State Defendants;
and
- 3) Such other relief as is just and proper.

Respectfully submitted,

ERIC SCHMITT
Attorney General

/s/ James Klahr
James Klahr
Assistant Attorney General
Missouri Bar Number 43653
PO Box 899
Jefferson City, MO 65102
Telephone: (573) 751-8345
Facsimile: (573) 751-5660
E-Mail: james.klahr@ago.mo.gov

*Attorneys for Missouri State Board
of Education, Department of
Elementary and Secondary
Education, and Office of Special
Education*