

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAY 12 2003

JAMES W. McCORMACK, CLE.  
By: *J. Jones*  
DEP CLE

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**DAVID BRADLEY, et. al.**

**PLAINTIFFS**

**VS.**

**NO:4:96CV1004  
4:00CV00747**

**ARKANSAS DEPARTMENT OF EDUCATION, et. al.**

**DEFENDANTS**

**ORDER**

Pending are the motion to dismiss on behalf of the State Defendants (docket # 144) and motion to strike Plaintiff's memorandum in opposition to motion to dismiss (docket # 147). The Court will consider Plaintiff's opposition to the motion to dismiss, accordingly, Defendants' motion to strike is denied. The Court finds that Defendants' motion to dismiss should be granted in part and denied in part for the reasons set forth herein.

Thomas and Dianna Bradley originally filed this lawsuit against the Arkansas Department of Education ("ADE"), Mike Crowley, the Williford School District and several school district officials in 1996. In 2000, Plaintiffs filed an additional lawsuit naming the same Defendants as well as officials from the ADE, Ray Simon, Marcia Harding and members of the Williford School Board. These lawsuits were consolidated on November 8, 2000. Plaintiffs claim that the school district, the Arkansas Department of Education and the state education officials have violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1487, §504 of the Rehabilitation Act, 29 U.S.C. §794 and 42 U.S.C. §1983.

On August 30, 2002 the Eighth Circuit Court of Appeals issued an opinion reversing this

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Court, finding that Ray Simon, Marcia Harding and Mike Crowley are entitled to qualified immunity and dismissing all claims for money damages against these individuals.

Defendants assert that because David Bradley is no longer a student eligible for services under the IDEA, his claim for injunctive relief against the State Defendants is moot. Plaintiffs agree that David is now graduated from Williford, is over the age of 21 and will not benefit from the injunctive relief that is sought on behalf of the class. Plaintiffs argue, however, that David continues to have individual claims against the Department of Education for violations of its obligations to him under the IDEA which entitle him to the equitable remedy of compensatory education and reimbursement for past expenses. Both the Fourth and Fifth Circuits have concluded that there is nothing in either the language or the structure of IDEA that limits the district court's authority to award reimbursement costs against the state educational agency or the local educational agency, or both, in any particular case. *Gadsby by Gadsby v. Grasmick*, 109 F.3d 940, 955 (4th Cir.1997); *St. Tammany Parish School Bd. v. State of Louisiana*, 142 F.3d 776, 783-84 (5th Cir.1998). In accordance with *Gadsby* and *St. Tammany Parish School Board*, the Court finds that David Bradley continues to have a claim against the Department of Education for violations of its obligations to him under the IDEA which might entitle him to reimbursement costs.<sup>1</sup>

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<sup>1</sup> The State argues that the Eighth Circuit in footnote 6 of its August, 2002 opinion recognized that the Plaintiffs can only maintain a claim for compensatory education against the school district and not the state department of education. The court disagrees with this interpretation of the Eighth Circuit's opinion. The Eighth Circuit, in Footnote 6, specifically addressed the issue of recovery of reimbursement expenses from *the state defendants in their individual capacities*. The Circuit noted the lack of authority to award such expenses against either state or local education *officials*. The note does not suggest that such recovery is unavailable from either the state department of education or the local district.

Next, the Defendants argue that David Bradley is not an adequate class representative in this class action. The Court has certified the following classes of individuals:

(1) All school-age children with disabilities and their parents, guardians and next friends who have been, are being or will be denied

(a) their right to a decision of their due process complaint within 45 days.

(2) All high school, junior high school, middle school, or late primary school-age children, as well their parents, guardians and next friends who have been identified as having autism, Asperger's Syndrome, or Pervasive Developmental Disorder (PDD), or a disability with characteristics similar to autism, and who have strong cognitive abilities, but who have been, are being or will be denied an education which

(a) is both appropriate and integrated, as to both academic and extracurricular activities;

(b) provides for participation and progress in the general curriculum; and

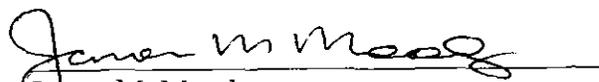
(c) utilizes promising and proven educational practices.

Defendants argue that implicit in both class definitions is the requirement that the class representative be someone qualified to receive services under the IDEA. Prior to David Bradley's graduation from high school, there is no dispute that he was qualified to receive services under the IDEA. Additionally, as set forth above, he continues to have a claim for reimbursement expenses. Although David Bradley had graduated from high school at the time the Court certified the class in this case, he had not graduated at the time the complaint was filed and thus met the definitions set forth above. The Court finds that this case belongs "to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975), *see also, Sosna v. Iowa*, 419 U.S. 393 (1975). The Court finds that David Bradley will continue to adequately protect the interests of the class. As in *Sosna*, the Court finds that the nature of the

class claims are such that because of the passage of time, no single challenger may remain subject to the provisions of the IDEA for the period necessary to see the lawsuit to its conclusion, yet, the claims remain alive for the members of the class. The problems posed by the class are "capable of repetition, yet evading review." *See, Sosna, supra.*

Accordingly, Defendants' motion to dismiss, docket # 144 is granted in that all claims for money damages are hereby dismissed against the individual State Defendants. Defendants' motion to dismiss is otherwise denied. Defendants' motion to strike, docket # 147 is denied.

IT IS SO ORDERED this 9 day of May, 2003.

  
James M. Moody  
United States District Judge

THIS DOCUMENT ENTERED ON  
DOCKET SHEET IN COMPLIANCE  
WITH RULE 58 AND/OR 79(a) FRCP  
ON 5/13/03 BY J Jones

UNITED STATES DISTRICT COURT  
Eastern District of Arkansas  
U.S. Court House  
600 West Capitol, Suite 402  
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May 13, 2003

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 4:96-cv-01004.

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Date: 5/13/03

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