

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

APR 27 2001

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
DEP. CLERK

JIM AND SUSAN C.,
individually and as parents of J.C.

PLAINTIFFS

V. 4:99CV921 GTE
4:96CV748 GTE

ATKINS SCHOOL DISTRICT,
ARCH FORD EDUCATIONAL SERVICE
COOPERATIVE, and ARKANSAS
STATE DEPARTMENT OF EDUCATION

DEFENDANTS

ORDER DENYING MOTION FOR RECONSIDERATION

Currently before the Court is the Plaintiffs' "Motion Under Various Federal Rules of Civil Procedure to Reconsider the March 23, 2001 Order."¹ In an Order filed on March 23, 2001 and entered on March 26, 2001, the Court granted the Defendant Atkins School District's Motion for Summary Judgment and dismissed the complaints' with prejudice as to all Defendants. The Plaintiffs now move "for additional findings of fact, alterations, amendments of the judgment and for a new trial or first trial upon the merits of the claims against Defendants Arch Ford Educational Service Cooperative and the Arkansas State Department of Education." For the reasons stated herein, the motion is DENIED.

Plaintiffs purport to file their motion under three Federal Rules of Civil Procedure: "Rules 52(b), 59 and 60. All of these Rules allow the Court to amend or alter a decision after entry of judgment. Such relief, however, is generally only available when a manifest error of law or fact affects the correctness of the judgment. See *Norman v. Arkansas Dep't of Educ.*, 79 F.3d 748, 750 (8th Cir. 1996); *Mitchell v. Shalala*, 48 F.3d 1039, 1041 (8th Cir. 1995). After reviewing the

¹ Docket No. 96.



Plaintiffs' Motion, the Court will not depart from its decision other than to file an amended Order, attached hereto, that corrects the Court's inadvertent misstatement regarding this case's procedural history.²

The Court notes that the Plaintiffs' main objection with respect to the Court's decision to dismiss the case pertains to the dismissal of the Arkansas Department of Education ("ADE") and the Arch Ford Educational Service Cooperative ("Arch Ford"). Initially, Plaintiffs' contend that the Court's order "errs in ruling to dismiss all Defendants at a time when there were not pending motions for summary judgment on file from all of the Defendants, most notably ADE." (Motion to Reconsider, at ¶ 3). However, at the time the Court issued its Order, there were, in fact, pending motions for summary judgment and/or motions for dismissal involving ADE with respect to both Complaints. On October 20, 1997 ADE filed a Motion to Dismiss and in the Alternative for Summary Judgment in Case No. 4:96CV00748. (Docket No. 35). In that motion, ADE expressly addressed the Plaintiffs' argument with respect to ADE's procedural obligations under IDEA. (See Docket No. 36, at 15-17). The Plaintiffs filed a response and a cross-motion for summary judgment on November 24, 1997. (Docket No. 41). In addition, ADE filed a motion to dismiss with respect to Case No. 4:99CV00921 on April 4, 2000. (Docket No. 77). The Plaintiffs filed a response to this motion on June 5, 2000. (Docket No. 79). Moreover, in reviewing the lengthy transcripts from the two due process hearings as well as the numerous exhibits submitted during and after those hearings,

² In its previous Order, the Court misstated the holding of the Eighth Circuit *en banc* with respect to issues of Eleventh Amendment immunity. As a result of the Eighth Circuit's *en banc* opinion, the Plaintiffs were allowed to pursue their claims under § 504 of the Rehabilitation Act against all Defendants. However, the Court emphasizes that its findings and conclusions with respect to the adequacy of J.C.'s educational program defeat the Plaintiffs' claims under § 504 as to all Defendants.

the Court had an extensive opportunity to consider the full array of issues raised by the parties. Thus, the Court concludes that it was well within its authority in dismissing the Complaints as to all Defendants.

The Plaintiffs also argue that the Court has failed to thoroughly consider its claim that the ADE has failed to comply with its procedural obligations under the IDEA. Specifically, the Plaintiffs' contend that the ADE has failed to "acquir[e] and disseminat[e] to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and material." *Board of Educ. v. Rowley*, 458 U.S. 176, 207-08; *see also* 20 U.S.C. § 1453(c)(3)(D). The Plaintiffs also contend that the ADE "has engaged in an active campaign to frustrate the dissemination and implementation of ... ABA/Lovaas." In their Motion for Reconsideration, the Plaintiffs argue that the Court overlooked these contentions against the ADE.

Again, the Court disagrees with the Plaintiffs' view of its decision to dismiss these Complaints against all Defendants. The Court recognizes that the IDEA imposes obligations on *both* state educational agencies and local school districts. The Court also recognizes that the IDEA requires each state to adopt a comprehensive plan addressing its obligations under the IDEA – including its obligation to disseminate information to instructors of disabled children and to adopt promising educational practices. However, the Court still concludes that the ADE did not run afoul of this obligation or any of its other responsibilities under the IDEA. In particular, the Court emphasizes that the Plaintiffs have not, at any time, alleged that the ADE failed to adopt a plan or to implement policies and procedures in furtherance of its statutory obligations to disabled children.

Rather, the Plaintiffs' contention throughout both of the due process hearings has been that the ADE has not adopted the particular behavioral modification program that they requested. Although the IDEA guarantees parents of a disabled child the opportunity to participate with educators in forming an educational program for that child, it does not allow parents to dictate to schools the exact methods and programs that will be implemented with respect to the child.

The Plaintiffs have not, despite ample opportunity, presented any evidence that the ADE has "engaged in an active campaign to frustrate the dissemination and implementation" of the Lovaas method. The Plaintiffs' assert that "the evidence concerning this issue resides within the discovery files of Plaintiff's counsel in this case." They further assert that "this evidence discloses who, what, when, where, why and how the ADE irrationally and unscientifically excluded any local district's consideration of a promising methodology commenced by the U.S. Surgeon General and developed with financial support from the U.S. Department of Health and the National Institutes of Health." Although the Plaintiffs may possess evidence that would support their belief that the ADE acted to "frustrate" the implementation of the Lovaas method, this Court has not seen such evidence and is unwilling to allow the Plaintiffs to present further evidence at this late date.³

³ Indeed, even if the ADE somehow acted to "frustrate" the implementation of the Lovaas method in school districts, the Court concludes that such actions would not constitute a violation of the IDEA provided that the ADE had adopted an alternative method or methods of working with students having disabilities similar to J.C.'s disabilities. The extensive administrative record established that the ADE had adopted a comprehensive plan addressing its obligations under IDEA, had formed a task force that considered the various challenges associated with teaching autistic children, and sponsored teacher-training workshops for teachers working with autistic students. In the Court's view, this evidence established that the ADE was complying with its statutory obligations, and the Plaintiffs did not present evidence that suggested a basis for questioning this conclusion. (See Order, Docket No. 94, at 8).

In conclusion, the Court finds that the ADE complied with its obligations under the IDEA.⁴ The Court further concludes that Plaintiffs have not stated a sufficient legal or factual basis for a reconsideration of the Court's previous ruling. In particular, they have not identified a manifest error that affects the correctness of the Court's previous Order. Thus, the Court will DENY the Plaintiffs' Motion.

IT IS SO ORDERED this 27th day of April 2001.

Barnett Thomas Esala
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 4-30-01 BY [Signature]

⁴ Arch Ford is an intermediate educational agency that provides services to school districts within Arkansas. The Court's conclusions with respect to that the ADE apply equally to Arch Ford, as well.

F I L E C O P Y

bm

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
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April 30, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:96-cv-00748.

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