BEFORE LINDA McCULLOCH, SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

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WOLF POINT SCHOOL DISTRICT NOS. 45 AND 45A, Appellant, vs. D.B., individually and by and through his parents/guardians, D.B. and C.B. Respondents.	)	OSPI 287-01 **DECISION AND ORDER**

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Having reviewed the record below and considered the parties' briefs, the State Superintendent issues the following Order.

DECISION AND ORDER

The December 5, 2001, decision by the County Superintendent denying the District's motion to dismiss is REVERSED and the District's motion to dismiss is GRANTED.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

This is an appeal by the Wolf Point School District (the District). In the spring of 2001, Respondent D.B. (D.B.) was a freshman attending Wolf Point High School, a school within the District. In January 2001, D.B. suffered a sports injury causing him to wear a full leg brace for over two weeks. As alleged by Respondents, "Due in part to the failure of the school to make accommodations for [D.B.'s] physical handicap, [D.B.] failed his second semester [spring 2001] physical science." Respondents' *Notice of Appeal*, dated September 12, 2001, p. 2, ll. 14-16. During the summer of 2001, D.B. attended a summer school offered by the District and received a "P" in physical science.

In 2001, the District had an extracurricular participation policy in place that provided, "If a student receives a failing grade or a grade that does not earn credit as a semester grade, he/she will not be eligible for the next semester." The District denied D.B. participation in the District's extracurricular activities during the fall semester of 2001. D.B. grieved the District's denial to the District's Board of Trustees, which Board affirmed the District's denial of participation. D.B. appealed the Board's decision to the Roosevelt County Superintendent of Schools on September 12, 2001.

On September 19, 2001, the Roosevelt County Superintendent of Schools disqualified herself from this matter, and the Phillips County Superintendent of Schools accepted jurisdiction as the Acting Roosevelt County Superintendent of Schools (the County Superintendent).

The District moved the County Superintendent to dismiss Respondents' appeal on November 2, 2001, on the grounds the County Superintendent lacked jurisdiction to hear this matter. By Order dated December 5, 2001, the County Superintendent denied the District's motion to dismiss and ordered that:

> "Section 504 issues raised at a hearing on the matter here named will be set aside. When an issue is determined to be a valid 504 Claim, the protocol for hearing 504 issues will be stipulated."

That Order is the subject of this appeal and the question before the State Superintendent in this appeal is: Did the County Superintendent err as a matter of law in denying the District's motion to dismiss?

STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. §2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125.

The State Superintendent may reverse or modify a county superintendent's decision if substantial rights of the appellant have been prejudiced because the findings of fact, conclusions of law and order are (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4). Finally, the Montana Supreme Court has held that conclusions of law shall be reviewed to determine if the agency's interpretation of the law is correct. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990); *Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan*, 241 Mont. 274, 786 P.2d 1164 (1990).

MEMORANDUM OPINION

Issue: Did the County Superintendent err as a matter of law in denying the District's motion to dismiss? Yes, the District was entitled to a ruling in its favor as a matter of law. Moreover, because the matter is now moot, the appeal shall be dismissed.

A. Section 504 and County Superintendent Jurisdiction. A county superintendent does not hold unlimited authority to hear or decide matters of controversy arising from decisions of boards of trustees. See, for example, *Wallace v. Glendive School District*, OSPI 283-00, 20 Ed.Law 359 (2001). The Montana Legislature placed a particular limitation on a county superintendent's authority with Mont. Code Ann. §20-3-311(4), which provides, in part, that a "county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when * * * (4) the controversy involves education or possible identification of a child with a disability."

The controversy raised by Respondents falls within this statutory exception to a county superintendent's authority. Respondents' appeal to the County Superintendent in this matter claims D.B. failed physical science because the District failed "to make accommodations" for D.B.'s temporary physical handicap. Although Respondents argue that D.B.'s performance in summer school somehow negates the District's extracurricular policy, the essential feature of Respondents' appeal to the County Superintendent is that the District failed to accommodate D.B.'s temporary handicap. D.B.'s argument presumes that with accommodation, he would not have failed the course and, therefore, be denied the privilege to play sports.

As noted by the District, claims based on "failure to accommodate" raise "Section 504" issues. "Section 504" is a common reference to 29 U.S.C. §794, the codification of section 504 of the Rehabilitation Act of 1973, a federal law that requires school districts to make reasonable accommodations for students with disabilities. "County Superintendents do not have jurisdiction to make Section 504 decisions and this Superintendent does not have jurisdiction to review them." *Jefferson High School District No. 1 v. Student ML*, OSPI 262-96, 15 Ed.Law 54 (1996) (citing Mont. Code Ann. §20-3-211(4)). Section 504 claims must be made through the United States Department of Education, Office for Civil Rights.

Therefore, the County Superintendent erred in ordering that when "an issue is determined to be a valid 504 Claim, the protocol for hearing 504 issues will be stipulated." The County Superintendent lacked the jurisdiction to hear any Section 504 claim.

This matter is strikingly similar to that in *Jefferson.* This State Superintendent adopts and affirms the reasoning in that decision.

B. The Effect of Summer School on the District's Extracurricular Policy.

Respondent also raised the issue of the interplay between the District's summer school and the District's extracurricular policy. Respondents argued that because D.B. "does not currently have

a failing grade" in the fall of 2001, the policy ought not apply to him. With the passage of time, this issue became moot. D.B. complained of being denied the privilege to play sports during the fall 2001 semester, which semester has passed. "A legal question is moot when it no longer presents a justiciable controversy because the issues have become academic or dead or because any action the court may take will have no effect on the situation of the parties." *In the Matter of A.E.*, 289 Mont. 340, 342, 961 P.2d 1265, 1267 (1998). In this instance, the State Superintendent cannot grant effective relief because the semester in which D.B. was prohibited from playing sports has passed.

Although this matter is moot, the State Superintendent urges the District to reconcile its summer school policy with its extracurricular activity policy. If the District had been clear in its intent and modified its written extracurricular policy to address the applicability of its summer school policy, the District and the Respondents could have avoided the time, effort and resources spent on this matter.

Because the County Superintendent acted in excess of his statutory authority and because the other issues raised by Respondents are moot, Respondents' appeal shall be dismissed.

CONCLUSION

The December 5, 2001, decision by the County Superintendent denying the District's motion to dismiss is REVERSED, and the District's motion to dismiss is GRANTED.

Dated this 23rd day of April 2002.

/s/ Linda McCulloch .
LINDA MCCULLOCH
Superintendent of Public Instruction

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 23rd day of April 2002, I caused a true and exact copy of the foregoing "DECISION AND ORDER" to be mailed, postage prepaid, to the following:

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