BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] **BY AND THROUGH** [redacted]
AND [redacted]
Petitioners,

v.

COBB COUNTY SCHOOL DISTRICT,
Respondent.

Docket No.: 1738057
1738057-OSAH-DOE-SE-33-Miller

Agency Reference No.: 1738057

FINAL DECISION

ORDER GRANTING RESPONDENT'S FIRST AND SECOND MOTIONS FOR SUMMARY DETERMINATION

For Petitioners:

[redacted]
Parent, *pro se*

For Respondent:

Randall S. Farmer, Esq.
Gregory, Doyle, Calhoun & Rogers, LLC

I. INTRODUCTION AND PROCEDURAL BACKGROUND

[redacted] is a student with a disability who is eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On May 31, 2017, the Petitioners, [redacted] and his mother, [redacted] (hereinafter "Ms. [redacted], filed a due process hearing request ("Complaint") against the Respondent, the Cobb County School District ("District").

On June 20, 2017, the District filed its first motion for summary determination. A scheduling order entered on June 21, 2017, directed the Petitioners to respond to the District's motion on or before July 10, 2017. The Petitioners did not seek an extension of time and did not file a response.

On June 30, 2017, the District filed its second motion for summary determination. A second scheduling order entered on July 3, 2017, directed the Petitioners to respond to the District's motion on or before July 20, 2017. The Petitioners did not seek an extension of time and did not file a response.

After careful consideration of the arguments and submissions, and for the reasons set forth below, the District's first and second motions for summary determination are **GRANTED**.

II. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Rule 15 of the Office of State Administrative Hearings, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(1); see also G.J. v. Muscogee County Sch. Dist., 704 F. Supp. 2d 1299, 1304-05 (M.D. Ga. 2010) (stating that summary determination under Rule 15 "is similar to a motion for summary judgment"). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the fact established." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)).

Further, pursuant to Rule 15:

> When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. 616-1-2-.15(3); G.J., 704 F. Supp. 2d at 1305; see also Lockhart v. Dir., Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV.

LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mut. Auto Ins. Co., 186 Ga. App. 854 (1988)).

When all issues are decided on summary determination, no evidentiary hearing is required. Ga. Comp. R. & Regs. 616-1-2-.15(7); G.J., 704 F. Supp. 2d at 1305; see also O.C.G.A. § 50-13-41(e)(3); 34 C.F.R. § 300.514(a); Ga. Comp. R. & Regs. 160-4-7-.12(3)(s).

III. DISTRICT'S FIRST MOTION FOR SUMMARY DETERMINATION

The District initially moved for summary determination on the grounds that the Petitioners' Complaint fails to set forth a claim that may be adjudicated under IDEA. More specifically, the Complaint identifies "Educational Placement" as the Petitioners' reason for requesting a due process hearing, and requests as relief only that [redacted] be transferred to a different school. However, because the location where educational services are to be provided is a matter within the sole discretion of the school district, the Petitioners have failed to state a claim within the purview of IDEA, and the District is entitled to summary determination on this ground.

A. Findings of Undisputed Material Fact

Viewing the evidence in the light most favorable to the Petitioners, the following facts are undisputed:

1.

[redacted] is a resident of the District. He is eligible to receive special education services under the primary eligibility category of Moderately Intellectually Disabled ("MOID") and secondary eligibility category of Speech and Language Impaired. (Complaint; Respondent Cobb County School District's Response to Petitioner's Due Process Hearing Request ("Answer") ¶ 1; Respondent Cobb County School District's Motion for Summary Determination ("First Motion"), Undisputed Facts, ¶ 3.)

2.

In the instant hearing request, [redacted]s mother states that her "request is that [redacted] needs to be transferred to another school where he can be helped efficiently." (Complaint; First Motion, Undisputed Facts, ¶ 4.)

3.

Specifically, Ms. [redacted] requests that [redacted] be transferred to Lassiter High School. (Complaint; First Motion, Undisputed Facts, ¶ 5.)

4.

Ms. [redacted] does not provide any information as to why Lassiter High School is appropriate; nor does she explain how a transfer to Lassiter High School would provide [redacted] a free appropriate public education in the least restrictive environment. (Complaint; First Motion, Undisputed Facts, ¶ 6.)

5.

[redacted]'s current placement is the MOID small group class. (First Motion, Undisputed Facts, ¶ 7; Affidavit of Susan Christensen ("Christensen Aff."), ¶ 4.)

6.

[redacted] does not meet the specific criteria required for a behavioral placement. (First Motion, Undisputed Facts, ¶ 8; Christensen Aff., ¶ 5.)

7.

Wheeler High School is the high school within [redacted]s school zone based on residence. Thus, Wheeler High School is [redacted]'s home school. (First Motion, Undisputed Facts, ¶ 8; Christensen Aff., ¶ 7.)

8.

A MOID small group class is available at Wheeler High School. (First Motion, Undisputed Facts, ¶ 10; Christensen Aff. ¶ 7.)

9.

Wheeler High School is the appropriate placement for [redacted] because it is within his school zone, and it provides the appropriate supports and service for [redacted]s needs in the least restrictive environment. (First Motion, Undisputed Facts, ¶ 11; Christensen Aff., ¶ 8.)

10.

[redacted] is not eligible to attend Lassiter High School because it is not within his school zone. (First Motion, Undisputed Facts, ¶ 12; Christensen Aff. ¶ 9.)

[redacted] Conclusions of Law

IDEA enables a parent to bring challenges to the "identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to such child" by filing a due process complaint. 20 U.S.C. § 1415(b)(6)(A); see also 20 U.S.C. § 1415(c)(2). In this case, the Petitioners' Complaint presents only one issue: whether Ms. [redacted] has the right to select the school facility where [redacted]s educational services will be provided. Because the Court concludes, as a matter of law, that the District has the sole authority to determine the location of services, the District is entitled to summary determination in its favor.

The District's selection of the physical location of [redacted]s school is simply not a component of his educational placement. The Office of Special Education Programs ("OSEP"), which provides federal policy guidance regarding the provision of special education services under IDEA, considered a similar situation in Letter to Fisher, 21 IDELR 992 (OSEP July 6, 1994). There, OSEP advised that a change in the physical location of the facility where services would be provided did not amount to a change in a student's educational placement. Id.; see also

Letter to Veazey, 37 IDELR 10 (OSEP Nov. 26, 2001) ("the assignment of a particular school or classroom may be an administrative determination"); White v. Ascension Parish Sch. Bd., 343 F.3d 373, 379 (5th Cir. 2003) ("'educational placement', as used in the IDEA, means educational program – not the particular institution where the program is implemented"); R.L. v. Miami-Dade County Sch. Bd., 757 F.3d 1173, 1190 n.8 (11th Cir. 2014); L.M. v. Pinellas County Sch. Bd., 2010 U.S. Dist. LEXIS 46796, at *3-4 (M.D. Fla. 2010) (placement means the type of educational setting). Therefore, because the District has the discretion to select the school facility that will provide [redacted] with special education services, the Complaint is subject to dismissal.

IV. DISTRICT'S SECOND MOTION FOR SUMMARY DETERMINATION

The District further moved for summary determination on the grounds that the Petitioners have refused to participate in an IDEA-mandated resolution meeting, despite the District's reasonable efforts to secure their attendance. The Petitioners are not authorized under IDEA to unilaterally decline to participate in the resolution meeting. Therefore, the District is also entitled to summary determination on this ground.

A. Findings of Undisputed Material Fact

Viewing the evidence in the light most favorable to the Petitioners, the following facts are undisputed:

1.

The Notice of Filing and Order entered on June 5, 2017, ordered the parties to hold a resolution meeting within fifteen days of the filing of the Complaint, unless both parties agreed to waive the meeting or to mediate the dispute. (Respondent Cobb County School District's Second Motion for Summary Determination and Brief in Support ("Second Motion"), Undisputed Facts, Unnumbered ¶ 2; Court file.)

2.

Laurie Hickey, an administrative assistant with the District, was responsible for scheduling the resolution meeting. Because Ms. [redacted] does not speak English, Ms. Hickey began contacting a Spanish translator who contacted Ms. [redacted] to schedule the meeting. (Second Motion, Undisputed Facts, Unnumbered ¶ 1; Affidavit of Laurie Hickey ("Hickey Aff."), ¶ 5 & Ex. A.)

3.

The District reached out to Ms. [redacted] at least three times to schedule the resolution meeting. On May 31, 2017, the translator informed Ms. Hickey that Ms. [redacted] could not attend the meeting until June 12, when [redacted] started the extended school year. (Second Motion, Undisputed Facts, Unnumbered ¶ 2; Hickey Aff., ¶ 5 & Ex. A.)

4.

On May 31, the District offered June 6 as a meeting date and offered to meet via the telephone. (Second Motion, Undisputed Facts, Unnumbered ¶ 2; Hickey Aff., ¶ 8 & Ex. A.)

5.

On June 1, the translator informed Ms. Hickey that Ms. [redacted] could not meet via telephone and was not available until July 31 – the first day of school. (Second Motion, Undisputed Facts, Unnumbered ¶ 3; Hickey Aff., ¶ 9 & Ex. A.)

6.

On June 26, the District filed its Notice of Early Resolution Session, which indicated that the resolution meeting had not been held, but that the District was still trying to coordinate a meeting date. (Second Motion, Undisputed Facts, Unnumbered ¶ 4; Court file.)

7.

On June 21, the District offered to hold the resolution meeting on June 29 but the response was the same – Ms. [redacted] was not available and she told the translator she did not

understand what the urgency was about. (Second Motion, Undisputed Facts, Unnumbered ¶ 5; Hickey Aff., ¶¶ 10-12.)

8.

The deadline to hold the resolution meeting expired on June 31, and Ms. [redacted] never attended the meeting. (Second Motion, Undisputed Facts, Unnumbered ¶ 5; Court file.)

B. Conclusions of Law

A preliminary resolution meeting is the first step in the IDEA hearing process. At the resolution meeting, the parents meet with the relevant members of the child's individualized education program ("IEP") team to "discuss their complaint, and the facts that form the basis of the complaint, and the [school district] is provided the opportunity to resolve the complaint." 20 U.S.C. § 1415(f)(1)(B)(i)(IV); see also 34 C.F.R. § 300.510(a)(2); Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525 (2007). Because the resolution meeting is held prior to the due process hearing, it gives the parties an opportunity to avoid litigation that is often lengthy and expensive. Schaffer v. Weast, 546 U.S. 49, 59 (2005).

The resolution meeting is mandatory and must be convened within fifteen days of the school district's receipt of notice of the complaint. 20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a). The parties are excused from the resolution meeting only if both sides have waived the meeting in writing or agreed to use mediation. 20 U.S.C. § 1415(f)(1)(B)(i); 34 C.F.R. § 300.510(a)(3). Importantly, a parent's failure to participate in the resolution meeting will delay the timelines for the resolution process and the hearing until the meeting takes place. Furthermore, if the school district is unable to obtain the parent's participation after reasonable efforts have been made and documented, the district may request that the complaint be dismissed. 34 C.F.R. § 300.510(b)(4).

Based on the undisputed facts set forth above, the Court concludes that the District made and documented its reasonable efforts to obtain Ms. [redacted]s participation in an IDEA-mandated resolution meeting. Because Ms. [redacted] nonetheless refused to participate, the District is entitled to summary determination on this ground.

ORDER

For the foregoing reasons, the District's First and Second Motions for Summary Determination are **GRANTED**, and the Petitioners' Complaint is hereby **DISMISSED**.

SO ORDERED, this 14th day of August, 2017.

KRISTIN L. MILLER
Administrative Law Judge