

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FEB 18 2014

█ FOR █	:	
	:	
Petitioners,	:	
	:	
v.	:	Docket No. <u>Kevin Westray, Legal Assistant</u>
	:	OSAH-DOE-SE-1419661-33-KENNEDY
COBB COUNTY SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

**MEMORANDUM ORDER AND DECISION GRANTING
RESPONDENT’S MOTION FOR SUMMARY DETERMINATION**

I. INTRODUCTION

Petitioner, █ is a student in the Cobb County School District, and is eligible to receive services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

On November 22, 2013, Petitioners filed a Due Process Hearing Request (Complaint) contending that Respondent violated █’s rights under IDEA. Specifically, Petitioners alleged that Respondent failed to comply with Petitioners’ request for Respondent to provide a one-on-one paraprofessional throughout the school day, as was provided for in a previous IEP █ had in another school district prior to moving to Georgia. Petitioners further alleged that █’s first report card in the Cobb County School District showed he had failed every class.

Although Respondent made reasonable attempts, as outlined below, to schedule a resolution meeting with Petitioner █ a resolution meeting between the parties did not occur.

On January 27, 2014, Respondent filed a Motion for Summary Determination asserting that this matter should be dismissed because █ failed to participate in the resolution meeting. Petitioners have not responded to Respondent’s Motion.

Having considered the pleadings and arguments set forth before the Court, and based on the undisputed material facts set forth below, the Court concludes that Petitioners' due process complaint should be **DISMISSED WITHOUT PREJUDICE**.

II. FINDINGS OF UNDISPUTED MATERIAL FACT

1.

Petitioners filed a due process hearing request (Complaint) with the Office of State Administrative Hearings on November 22, 2013. On the Complaint form, Petitioners indicated that they did not wish to enter into an early resolution meeting. (Respondent's Exhibit A)

2.

Respondent received Petitioners' Complaint on or about December 4, 2013. (Respondent's Exhibits B, D)

3.

Respondent did not waive its right to participate in the early resolution process. (Respondent's Exhibits B, D)

4.

Respondent contacted Petitioner, [REDACTED] via telephone on December 4, 2013, to schedule the early resolution meeting. [REDACTED] advised Respondent that she was unable to speak at that time because she was at work. She asked Respondent to call back after 3:30 p.m. that day. (Respondent's Exhibit C)

5.

Respondent placed a call to [REDACTED] after 3:30 p.m. per her request. However, [REDACTED] did not answer the telephone. Additionally, [REDACTED]'s telephone did not have a voicemail option available so Respondent was unable to leave a message. (Respondent's Exhibit C)

6.

Respondent contacted [REDACTED] on December 5, 2013 via email and telephone. Respondent explained the 15-day early resolution meeting deadline and proposed Monday, December 16, or Wednesday, December 18, as possible meeting dates. [REDACTED] advised Respondent that she was only available to meet on Thursdays or Fridays, but did not offer a specific day that she would be available to participate in a meeting. (Respondent's Exhibit C)

7.

On December 6, 2013, Respondent spoke with [REDACTED] via telephone and reached an agreement to hold the resolution meeting on Thursday, December 12, 2013. (Respondent's Exhibit C)

8.

[REDACTED] notified Respondent on December 7, 2013 that she would not be able to attend the December 12, 2013 early resolution meeting because she had not checked with her advocate or attorney to determine if they would be available that day. [REDACTED] did not offer any dates that she, her advocate or her attorney would be available. Instead, [REDACTED] only stated that she could not meet on December 12, as had previously been agreed upon. [REDACTED] further advised Respondent at that time that she will re-file her paper work if needed since Respondent had told her a resolution meeting must be held within 15 days of the filing of the complaint. (Respondent's Exhibit C)

9.

On December 9, 2013, Respondent sent an email message to [REDACTED] proposing to meet on Friday, December 13, 2013. [REDACTED] informed Respondent that she would not be available on December 13 because her "advocate or an attorney was not available to attend with" her. She again reiterated that she will "resubmit [her] paper work due to the fact it has to be handled in 15 days." Respondent replied asking [REDACTED] to propose a date and time that she and her attorney could meet

prior to December 19. ■■■ did not reply to this request, nor did she provide any proposed meeting dates. (Respondent's Exhibit C)

10.

Respondent sent an email and a letter via U.S. Postal Service to ■■■ on December 11, 2013, explaining the statutorily imposed timeline for the early resolution meeting. Respondent also informed ■■■ that an early resolution meeting had been scheduled for December 18, 2013. This date was chosen by Respondent because ■■■ had not provided any proposed meeting dates or times. (Respondent's Exhibit D)

11.

On December 16, 2013, ■■■ informed Respondent that she would not attend the December 18, 2013 meeting because her advocate was not available that day. (Respondent's Exhibit D)

12.

Respondent's legal counsel sent an email and a letter via U.S. Postal Service to ■■■ on December 17, 2013, again reminding ■■■ of the statutory requirement for holding an early resolution meeting within 15 days of filing the complaint if both parties did not waive the meeting. Additionally, the letter reminded ■■■ of the scheduled December 18, 2013 resolution meeting. (Respondent's Exhibit E)

13.

■■■ did not appear at the early resolution meeting scheduled for December 18, 2013. (Respondent's Exhibit D)

14.

Respondent's legal counsel sent an email and a letter via U.S. Postal Service to ■■■ on December 30, 2013 requesting that ■■■ respond with her availability for an early resolution

meeting by January 3, 2014. Respondent's legal counsel also informed [REDACTED] that if she failed to propose potential meeting dates, that the District would move for dismissal of Petitioners' Complaint. Petitioners did not respond to the request. As of the date that Respondent's motion was filed, Petitioners' had not provided the District with any specific dates that they would be available to meet. (Respondent's Exhibits D, E)

III. STANDARD ON SUMMARY DETERMINATION

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

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

GA. COMP. R. & REGS. r. 616-1-2-.15(1). 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 facts established." Pirkle v. Env'tl. 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)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary adjudication).

Further, pursuant to OSAH Rule 15:

When a motion for summary determination is made and 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 in the hearing.

GA. COMP. R. & REGS. r. 616-1-2-.15(3). See Lockhart v. Dir., Env'tl. 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 Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)). In this case, as set forth below, the Court concludes that no genuine issue of material fact remains for determination and that Respondent is entitled to dismissal of Petitioners's Complaint as a matter of law for Petitioners's failure to cooperate with the early resolution process.

IV. CONCLUSIONS OF LAW

A. Resolution Meeting Requirement

When a parent files a due process complaint under IDEA, the process begins with a preliminary resolution meeting, during which the parent is required to discuss the complaint with school officials in order to give the school district an opportunity to address the parent's complaints and propose a resolution. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525 (U.S. 2007); See 34 C.F.R. § 500.510(a)(2) (The purpose of the mandatory resolution meeting is for the parent "to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the [school district] has the opportunity to resolve the dispute that is the basis for the due process complaint.") Congress added the requirement that a resolution meeting be conducted prior to a due process hearing in an effort to reduce the costs of administration and litigation and avoid what often is a lengthy and costly hearing. *Schaffer v. Weast*, 546 U.S. 49, 59 (U.S. 2005).

A resolution meeting is mandatory under IDEA, and it must be convened between the parent and relevant members of the student's IEP Team within 15 days of receiving notice of the due process complaint and prior to the initiation of a due process hearing. 34 C.F.R. § 500.510(a). The only exception to this requirement is in the event that both parties agree in

writing to waive the resolution meeting or agree to use mediation. 34 C.F.R. § 500.510(a)(3)(i). Unless there is a joint agreement to waive the resolution meeting, IDEA provides that the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. 34 C.F.R. § 500.510(b)(3). Moreover, if the school district is unable to obtain the parent's participation in the resolution meeting after reasonable efforts have been made and documented, the district may request that the due process complaint be dismissed. 34 C.F.R. § 500.510(b)(4).

B. Plaintiff's Due Process Complaint Should Be Dismissed

█████ indicated on the Due Process Hearing Request Form that she did not wish to participate in the early resolution process. However, Respondent did not jointly agree to waive the resolution process. Accordingly, a resolution meeting was required to be held.

Based on the undisputed facts set forth above, the Court concludes that Respondent made reasonable efforts to obtain █████'s participation in a resolution meeting to discuss Plaintiff's complaint and attempt to resolve the dispute without the need to proceed with a due process hearing. The Court also concludes that Respondent properly documented its attempts to arrange a mutually-agreed upon time for the resolution meeting as required by IDEA. Accordingly, the Court concludes that because Respondent was unable to obtain █████'s participation in the resolution meeting during the resolution period, the due process complaint is subject to dismissal.

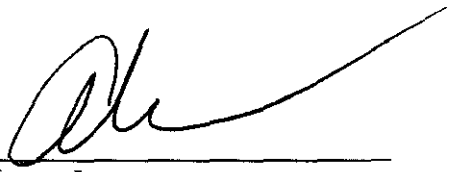
By requesting a due process hearing under IDEA, █████ triggered an expedited process that requires both parties to participate in either a pre-hearing resolution meeting or mediation. As neither one has occurred, this matter is not ripe for hearing. Having considered the actions of the parties in this case, and Respondent's efforts to schedule a resolution meeting within the

IDEA time frame, the Court concludes that Petitioners' due process complaint should be dismissed.

V. ORDER

For the foregoing reasons, Respondent's Motion for Summary Determination is **GRANTED**. Petitioners' Complaint is dismissed without prejudice. Inasmuch as this Order resolves all issues in this pending matter, this case is removed from the Court's calendar for March 3-4, 2014.

SO ORDERED, this 18th day of February, 2014.



Ana Kennedy
Administrative Law Judge

