

On December 15, 2014, Defendant filed a Motion for Summary Determination asserting that this matter should be dismissed because [REDACTED] mother refused to participate in any resolution meeting proposed by the Defendant. Further, Plaintiff has not responded to Defendant's Motion for Summary Determination.

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 Plaintiffs' due process complaint should be **DISMISSED WITHOUT PREJUDICE**.

II. FINDINGS OF UNDISPUTED MATERIAL FACT

1.

Plaintiff filed his initial Request for a Special Education Due Process Hearing on or about August 18, 2014. (*See* Complaint, Exhibit A).

2.

In the District's response, submitted to this Court on August 25, 2014, it reserved the right to file a Notice of Insufficiency. Accordingly, the District filed its Notice of Insufficiency on August 27, 2014. (*See* First Notice of Insufficiency, Exhibit B).

3.

This Court agreed that Plaintiff's initial Complaint failed to meet the requirements of IDEA and ordered on August 28, 2014, that Plaintiff amend his Complaint so that it would comport with the requirements of IDEA by September 19, 2014. (*See* Order of August 28, 2014, Exhibit C).

4.

As a result of the Court's Order, Plaintiff filed his Amended Request for a Special Education Due Process Hearing on September 12, 2014. (*See* Amended Complaint, Exhibit D).

5.

The District contacted Plaintiff via email on September 15, 2014, in an attempt to schedule an Early Resolution Meeting. Yet Plaintiff did not respond to the email message. (*See* Affidavit of Dr. Katrina King ¶ 9, Exhibit E).

6.

The District, in an email message to Plaintiff on September 16, 2014, explained the 15-day early resolution meeting deadline and proposed two dates for the meeting. The District also attempted to contact Plaintiff via telephone; however, the voicemail box was full. (*See* Affidavit of Dr. Katrina King ¶ 10, Exhibit E).

7.

The District's counsel sent an email and a letter via U.S. Postal Mail to Plaintiff on September 18, 2014, again reminding Plaintiff 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. (*See* Affidavit of Erika D. Robinson, Esq. ¶4, Exhibit F).

8.

In the District's Response to Plaintiff's Amended Complaint, filed on September 22, 2014, it reserved the right to file a Notice of Insufficiency, which it filed on the same day. (*See* Second Notice of Insufficiency, Exhibit G).

9.

This Court agreed that the Plaintiff's Amended Complaint failed to meet the pleading requirements of IDEA and ordered on September 25, 2014, that Plaintiff amend his hearing request by October 10, 2014. (See Second Order on Sufficiency of Due Process Complaint, Exhibit H).

10.

Although the District had a pending notice of insufficiency, the Parties established a resolution meeting time for September 26, 2014. However, Plaintiff's mother sent an email shortly before the meeting was to begin stating that the established time no longer worked for her schedule. (See Affidavit of Dr. Katrina King ¶ 13, Exhibit E).

11.

Plaintiff filed her Second Amended Complaint on or about October 16, 2014, six days beyond the Court's established deadline. (See Second Order on Sufficiency of Due Process Complaint, Exhibit H).

12.

The District informed Plaintiff's mother that it was required to hold an early resolution session by October 31, 2014, in an email sent to Plaintiff's mother on October 23, 2014. In the email, the District proposed three dates/times to hold the meeting. (See Affidavit of Dr. Katrina King ¶ 15, Exhibit E).

13.

Plaintiff's mother agreed to attend an early resolution meeting on October 31, 2014, at 3:30 p.m. However, at 3:22 p.m. on October 31, 2014, Plaintiff's mother notified the District via

email that she would not attend the meeting due to issues with her car. (See Affidavit of Dr. Katrina King ¶ 17, Exhibit E).

14.

Plaintiff's mother agreed to participate in a mediation session with the District and a mediator from the Georgia Department of Education on December 11, 2014, at a time that she requested. Nevertheless, Plaintiff's mother failed to attend this meeting. (See Mediation No Show Letter, Exhibit I).

III. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Office of State Administrative Hearings ("OSAH") Rule 15, 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. 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 and that the moving party is entitled to a judgment as a matter of law on the facts established. *A.B. v. Clarke Cnty. Sch. Dist.*, No. 3:08-CV-86 (CDL), 2009 WL 1606544, at *3 (M.D. Ga. June 8, 2009).

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 other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

Ga. Comp. R. & Regs. 616-1-2-.15(3). Here, as set forth below, the Court concludes that no genuine issue of material fact remains for determination and that Defendant is entitled to dismissal of Plaintiff's Complaints as a matter of law for Plaintiff's failure to cooperate with the early resolution process.

IV. CONCLUSIONS OF LAW

Under IDEA, when a parent files a due process complaint, the process commences with a preliminary resolution meeting, during which the parent is required to discuss the complaint with school personnel to provide the school district the opportunity to address the parent's issues and offer a resolution. *Winkelman v. Param City Sch. Dist.*, 550 U.S. 516, 525 (2007); *Beaverton School District*, 62 IDELR 70 (Oregon, Aug. 22, 2013).

Prior to commencing a due process hearing and after the filing of the hearing request, the IDEA and its implementing regulations provide that "within 15 days of receiving notice of the parent's due process complaint . . . the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team . . . except where the parties have jointly agreed to waive the resolution process or to use mediation." 34 C.F.R. § 300.510 (a)(3)(i). 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).

Based on the undisputed facts set forth above, the Court concludes that Defendant made reasonable efforts to obtain [REDACTED] mother's participation in a resolution meeting to discuss Plaintiff's complaint and to attempt to resolve the dispute without the need to proceed with a due process hearing. The Court concludes that Defendant 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 Defendant was unable to obtain [REDACTED] mother's participation in the resolution meeting during the resolution period, the due process complaint is subject to dismissal.

V. ORDER

For the forgoing reasons, Defendant's Motion for Summary Determination is **GRANTED**. Plaintiff's Complaint is dismissed without prejudice. Because this Order resolves all issues in this pending matter, this case is removed from the Court's calendar for January 14, 2015.

SO ORDERED, this 9th day of January, 2015.



AMANDA C. BAXTER
Administrative Law Judge