

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

█
Plaintiff,
v.
DECATUR CITY SCHOOL DISTRICT,
Defendant.

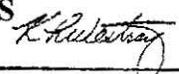
Docket No.:
OSAH-DOE-SE-█-44-Baxter
15-300963



JAN 21 2015

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. Introduction


Kevin Westray, Legal Assistant

This action came before the Court pursuant to a complaint filed by █ (“Plaintiff”) against Decatur City School District (“Defendant” or “District”) alleging that Defendant failed to provide Plaintiff with a free appropriate public education (“FAPE”) as required under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. §§ 1400 - 1482, and its implementing regulations, 34 C.F.R. Part 300. Plaintiff further alleges that Defendant violated his rights pursuant to Section 504 of the Rehabilitation Act (“Section 504”) and the Americans with Disabilities Act (“ADA”).

Specifically, Plaintiff alleges that Defendant violated federal and state law by removing him from the District’s courtesy tuition program, which allowed him to attend school in the District even though he was not a resident. (Plaintiff’s Due Process Hearing Request (“Complaint”), p. 4.) Plaintiff also contends that Defendant denied him FAPE by providing an improper Individualized Education Program (“IEP”), failing to take data and base programming on data, failing to provide necessary services and programming, failing to provide necessary related services and aids, and failing to comply with his IEPs. (Complaint, p. 4.)

On December 5, 2014, Defendant filed a Motion to Dismiss. Plaintiff responded to Defendant's Motion on December 17, 2014. Defendant seeks dismissal on the following four grounds:

- (i) The Office of State Administrative Hearings ("OSAH") does not have jurisdiction to hear Section 504 and ADA claims;
- (ii) Plaintiff is not a resident of the District and is therefore not entitled to FAPE in the District;
- (iii) To the extent that Plaintiff alleges claims that arose prior to the statute of limitations, those claims must be dismissed; and
- (iv) Plaintiff waived any due process rights in relation to suspension, expulsion, or dismissal from the District.

II. Legal Standard

Motions to dismiss are authorized by O.C.G.A. § 50-13-13(a)(6), which provides that "[t]he agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to . . . dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground" See also O.C.G.A. § 9-11-12(b); Ga. Comp. R. & Regs. 616-1-2-.02(3). A motion to dismiss may be granted only if "(1) . . . the allegations in the complaint disclose[] with certainty that [the plaintiff] would not be entitled to relief under any set of provable facts and (2) [the defendant has] shown that [the plaintiff] cannot possibly introduce evidence within the framework of the complaint that would warrant the relief sought." Assoc. of Guineans in Atlanta, Inc. v. DeKalb Cnty., 292 Ga. 362, 363-64 (2013) (citation omitted). In ruling on a motion to dismiss, the complaint must be construed in the light most favorable to the plaintiff, with any doubt resolved in the plaintiff's favor. Quetgles v. City of Columbus, 264 Ga. 708, 708-09 (1994). Nonetheless, a motion to dismiss must be granted where the complaint is "clearly without any merit; and this want of merit may consist in an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or

in the disclosure of some fact which will necessarily defeat the claim.” Earl v. Mills, 275 Ga. 503, 504 (2002) (citation omitted).

III. Analysis

For the following reasons, the Court finds that, even construing the Complaint in a light most favorable to Plaintiff, the law does not support the Plaintiff’s claims.

1. Section 504 and ADA Claims are Outside of this Court’s Jurisdiction

Plaintiff’s claims under Section 504 and the ADA must be dismissed for lack of jurisdiction. A parent may file a due process complaint on any matter relating to the IDEA or the provision of FAPE. 34 C.F.R. § 300.507(a)(1); Ga. Comp. R. & Regs. 160-4-7-.12(3) (“The impartial due process hearing is designed to provide a parent or [district] an avenue for resolving differences with regard to the identification, evaluation, placement or provision of a (FAPE) to a child with a disability.”); see also Atlanta Indep. Sch. Sys. v. S.F., No. 1:09-CV-2166-RWS, 2011 U.S. Dist. LEXIS 35278, *34 (N.D. Ga. Mar. 31, 2011) (ADA and Section 504 are not constrained by the IDEA). Accordingly, Plaintiff’s claims relating to Section 504 and the ADA must be dismissed because they are outside the scope of the IDEA and any provisions of FAPE, which are the sole bases of a due process complaint.

2. Plaintiff is Not a Resident of the District

Defendant is not responsible for providing Plaintiff with FAPE because Plaintiff is not a resident of the District. Plaintiff has not been a resident of the District since he moved out of the District in Kindergarten. (Complaint, p. 2.) Because Plaintiff’s mother was a full-time staff member in the District, Plaintiff was permitted to enroll in Defendant’s schools pursuant to Defendant’s courtesy tuition program, which enables children of full-time staff to attend *any* school in the District. (Complaint, p. 3.) Defendant’s courtesy tuition program exceeds state

law, which allows full-time employees' children to attend the school where the full-time staff member works. See O.C.G.A. § 20-2-293(b). The tuition contract between Plaintiff and Defendant ("Tuition Contract") provides that students in the courtesy tuition program may be removed from the District for unacceptable behavior, unacceptable attendance, lack of effort and/or poor academic performance, the admission or continued enrollment of the student would require Defendant to hire additional staff or contract for additional services, or other good and sufficient cause. (Complaint, p. 3.) The Tuition Contract states that such suspension, expulsion, or dismissal will be made in accordance with school board policy and without the requirement of formal or informal due process. (Complaint, p. 3.)

School districts are legally required to provide FAPE and services under the IDEA to residents in their districts. 34 C.F.R. §§ 300.28, 300.201; see also Department of Education Notice of Proposed Rulemaking, 71 Fed. Reg. 46540 (U.S. Department of Education states that § 300.201 clarifies that district of residence is responsible for provision of FAPE). Georgia law also provides that students are entitled to FAPE in the school system where they reside. O.C.G.A. § 20-2-133(a); Ga. Comp. R. & Regs. 160-4-7-.02(c)(1). Case law corroborates that a district need only provide special education services to students residing within its jurisdiction. Mandy S. v. Fulton Cnty. Sch. Dist., 205 F. Supp. 2d 1358, 1368-69 (N.D. Ga. 2000) (citing 20 U.S.C. § 1413(a); O.C.G.A. § 20-2-133(a); Susan R.M. v. Northeast Indep. Sch. Dist., 818 F.2d 455, 458-59 (5th Cir. 1987)).

Plaintiff argues that Defendant is estopped from discontinuing services it previously provided to Plaintiff through IEPs and for which it received federal and state funding. Plaintiff cites no case law to support either of these claims. First, Plaintiff's assertion that the IEPs were a promise to provide eligibility under the IDEA lacks merit. Courts have held that an IEP does not

create any contractual rights. Wiles v. Dep't of Ed., 555 F. Supp. 2d 1143, 1157 (D. Haw. 2008) (citing Van Duyn v. Baker Sch. Dist., 5J, 502 F.3d 811, 820 (9th Cir. 2007)). Additionally, the Northern District of Georgia has found that a student cannot assert an IDEA claim against a school district even though that district had been providing IEPs. Mandy S., 205 F. Supp. 2d at 1368-69.

Furthermore, the Tuition Contract expressly states Defendant would not provide formal or informal due process. Promissory estoppel cannot be asserted where there is an express contract. Nickell v. IAG Fed. Credit Union, 213 Ga. App. 516, 519 (1994); SKB Indus., Inc. v. Insite, 250 Ga. App. 574, 577 (2001). Additionally, a non-resident of the school district has no constitutionally cognizable property interest in attending the district, rendering a due process hearing unnecessary. See G.C. III v. Owensboro Public Schools, No. 4:09-CV-102-JHM, 2009 U.S. Dist. LEXIS 106626, *8-9 (W.D. Ky. Nov. 16, 2009) (finding statute and policy allowing student to attend non-resident school did not provide right to attend).

Second, Plaintiff contends that Defendant assumed obligations under IDEA because it received funding from the state and federal government. Receipt of funding from the state for enrolled non-residents, however, is specifically authorized under O.C.G.A. § 20-2-160(a) and nothing in that statute provides that counting non-resident students for funding purposes results in the assumption of IDEA obligations. Additionally, federal law does not provide for any such assumption.

Finally, Plaintiff argues that O.C.G.A. § 20-2-293 confers a right to FAPE for students in the district where a full-time staff member parent works. O.C.G.A. § 20-2-293(a) allows for enrollment of non-residents at the school's discretion, but does not suggest that the school must provide FAPE to non-resident students. Additionally, O.C.G.A. § 20-2-293(b) is inapplicable to

this case because it only applies when the student attends the same school that the employee parent works full-time, which Plaintiff did not.

Based on the foregoing, Plaintiff, as a non-resident of the District, is not entitled to FAPE under IDEA from the Defendant.¹

IV. Decision

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED** and Plaintiff's Complaint is hereby **DISMISSED** in its entirety. The matter is removed from this Court's January 27, 2015 hearing calendar.

SO ORDERED this 20th day of January, 2015.



Amanda Baxter
Administrative Law Judge

¹ Plaintiff argues that Defendant should have provided a manifestation determination pursuant to the IDEA prior to his dismissal. As discussed, compliance with IDEA procedure was not required because Plaintiff was not a resident of the District. Even if he had such rights, Plaintiff waived any entitlement to due process prior to dismissal because the Tuition Contract explicitly stated that students could be dismissed without informal or formal due process. Courts have found that an unambiguous waiver of a child's educational rights is enforceable. See South Kingstown Sch. Comm. v. Joanna S., No. 13-127ML, 2013 U.S. Dist. LEXIS 183356, at *31-32 (D.R.I. Sept. 19, 2013) (citing to several federal circuit cases finding agreements that arguably compromise entitlement to FAPE do not inherently violate law or public policy).