

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



APR 13 2017

Kevin Westray, Legal Assistant

█ by and through her parents, █

Petitioners,

v.

ATLANTA INDEPENDENT SCHOOL
SYSTEM,

Respondent.

Docket No. OSAH-DOE-SE-1723663-60-Baxter

**ORDER GRANTING RESPONDENT ATLANTA INDEPENDENT SCHOOL SYSTEM'S
MOTION FOR INVOLUNTARY DISMISSAL**

On March 16, 2017, the parties attended a Due Process Hearing and this Court heard testimony from █ and █ mother. At the conclusion of █ presentation of evidence, Respondent moved for involuntary dismissal of all claims on the basis that Petitioners had not met their burden of proof. For the reasons set forth below, this Court **GRANTS** Respondent's Motion for Involuntary Dismissal as to all claims.

As the party bringing this hearing request and seeking relief, Petitioners bear the burden of proof as to all issues for resolution. *See Schaffer v. Weast*, 126 S. Ct. 528 (2005), DOE Rule 160-4-7-.12(3)(m). "After the party with the burden of proof has presented its evidence, any other party may move for dismissal on the ground that the party that presented its evidence has failed to carry its burden." OSAH Rule 35.

Petitioners brought this matter alleging violations of IDEA based upon allegations that █ was denied accommodations of use of a calculator and use of notes; █ was not provided the co-taught placement according to her IEP; and that █ was reading on a third grade level. At the hearing, █ testified that she was allowed the use of a calculator and only indicated that

there were potentially two instances where she was not permitted use of a calculator; however, Petitioners could not provide any specific information or details regarding those alleged instances. Petitioners entered a copy of the IEP plan into evidence, which does not list use of notes as an accommodation. Petitioners offered no evidence that use of notes was an accommodation in her IEP plan. [REDACTED] further testified that she was unhappy with the teachers in her co-taught classes, but she admitted that she was provided her academic courses in the appropriate placements of a co-taught setting. Finally, [REDACTED] admitted that she is passing her English/Language Arts class, she is reading texts appropriate to her grade-level curriculum, she scored a perfect score on a sample ACT test, and she is on-track to graduate in May 2017 and receive a regular high school diploma. Petitioners further admitted that Respondent has offered Extended School Year services to further assist with her reading goals and objectives. As such, Petitioners failed to offer any evidence that she cannot read above a third grade level or that Respondent has failed to provide appropriate services for reading.

Based upon the testimony of Petitioners, there was no evidence offered to demonstrate that Respondent has violated the provisions of the IDEA. Further, there is no evidence from Petitioners that demonstrates that Respondent has failed to provide a Free and Appropriate Public Education. Finally, there is no evidence from Petitioners that [REDACTED] has suffered a deprivation of educational services or benefits. Accordingly, Petitioners have failed to meet their burden of proof regarding their claims pursuant to the Due Process Hearing Request.

Based on the foregoing, Respondent is entitled to judgment as a matter of law on the facts established, as there remains no genuine issue of material fact for determination, and Petitioners' claims are all dismissed with prejudice.

SO ORDERED, this 13th day of April, 2017.



Hon. AMANDA BAXTER
Administrative Law Judge

Prepared and presented by:

/s/ Samantha P. Lewis

Samantha P. Lewis

Georgia Bar No. 120148

Attorney for Respondent Atlanta Independent School System