

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



FILED  
OSAH

APR 02 2019

█ by and through █; and █  
Petitioners,

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v.

HENRY COUNTY SCHOOL  
DISTRICT,  
Respondent.

Docket No.:  
1923996-OSAH-DOE-SE-75-Howells

*Kevin Westray*  
Kevin Westray, Legal Assistant

FINAL DECISION AND  
ORDER GRANTING INVOLUNTARY DISMISAL

Petitioner, █, is a student eligible for services under the under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”).<sup>1</sup> On January 9, 2019, Petitioner █ by and through his parent, filed a due process hearing request (“Complaint”) contending that Respondent Henry County School District (“Respondent” or “District”) violated his rights under IDEA related to the educational placement of █, and the provision of a free appropriate public education (“FAPE”). The District filed its response on January 22, 2019.

The hearing in this matter was initially scheduled for February 19, 2019. On February 8, 2019, Respondent filed a motion for a continuance because the parties agreed to participate in mediation and the mediation was scheduled for March 4, 2019. Respondent’s continuance was granted, the hearing was continued to March 29, 2019, and the parties did, in fact, participate in mediation. The parties failed to reach a settlement of this matter.

At the hearing, Petitioner presented the testimony of █ and █ grade math teacher from █ Elementary. Mr. █ taught █ math in a resource setting for one period a day, five times a week. █ enjoyed the small group setting

<sup>1</sup> In 2004, the act was reauthorized and renamed as the Individuals with Disabilities Education Improvement Act of 2004. 108 P.L. 446. For the sake of simplicity, the undersigned will continue to refer to the act at the Individuals with Disabilities Education Act (i.e., IDEA).

and made progress. Mr. [REDACTED] noticed that [REDACTED] was more comfortable raising his hand and participating in the small group setting as opposed to a larger classroom setting. Mr. [REDACTED] did note that [REDACTED] would complain about a “stomach” ache when there was work that he did not want to do or he would become fidgety; however, he did not observe any behavior issues that required sending [REDACTED] to the principal’s office. (Testimony of [REDACTED])

Petitioner [REDACTED] testified that she filed the Complaint because she did not agree with [REDACTED] being placed in a self-contained classroom. She disagreed with the December 6, 2018 IEP. While she testified that [REDACTED] goals have not changed, she did not provide any specific testimony about what his goals were, what they should have been, or in what why they may not have been appropriate.<sup>2</sup> She thinks that the District should have re-evaluated [REDACTED] before recommending a self-contained classroom as his placement. In or around August or September of 2018, Petitioner went to [REDACTED] to observe the self-contained classroom proposed by the District. According to Petitioner, every child in the classroom had a physical disability. She did not understand why the District wanted to place [REDACTED] in that classroom. [REDACTED] is currently placed in the self-contained classroom at [REDACTED]. Petitioner acknowledges that [REDACTED] has made progress, but she believes he made the progress before he went to [REDACTED]. Petitioner asserted that [REDACTED] was learning before he was placed at [REDACTED]. During her testimony she generally referenced [REDACTED] grades, but did not tender any evidence of specific grades. (Testimony of Petitioner [REDACTED])

Aside from the testimony of Petitioner [REDACTED] and Mr. [REDACTED] Petitioner presented no other witnesses or any other evidence. At the close of Petitioner’s evidence, the District moved for involuntary dismissal. The undersigned notified the parties that the court would take a recess to consider Respondent’s motion. For the reasons stated below, Respondent’s motion for involuntary dismissal is **GRANTED**.

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<sup>2</sup> In fact, Petitioner did not seek to admit the December 6, 2018 IEP or any IEPs.

## Petitioner's Complaint

Petitioner's Complaint consists of the Due Process Hearing Request form used by the District. On the form, Petitioner's parent checked the following boxes to indicate the reasons why she was requesting a due process hearing:

√ Educational Placement (where the child receives IEP services)

√ Free Appropriate Public Education. There are five (5) common basic principles of FAPE under IDEA:

- (1) FAPE is available to all children without regard to severity of disability (zero reject principle).
- (2) FAPE is provided without cost to parents.
- (3) FAPE consists of individualized programming and related services.
- (4) FAPE provides an education that is appropriate, but not the best possible.
- (5) FAPE provided in the least restrictive environment (LRE).

(See Complaint.) In addition to the checked boxes, Petitioner's Complaint included the following paragraph:

I disagree with the placement of [REDACTED] in a self contained classroom. There is no behavioral issues documented. Sealed Medical Records and viewing of all discipline and school records, [REDACTED] fills (sic) like as a parent she was tricked into holding off on the IEP meeting because they already had made the discussion (sic) to remove [REDACTED] from this setting. We went to a private school today 01-09-2019, and [REDACTED] IEP was not in the system why is that? We Contests (sic) with the last IEP written on 12-06-2018.

(Id.)

## Discussion

Hearings before this tribunal are *de novo* proceedings, and the standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(3), (4). As the party bringing this hearing request and seeking relief, Petitioner bears the burden of proof as to all issues for resolution. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005).

This tribunal's rules of procedure allow motions for involuntary dismissal. Ga. Comp. R. & Regs. 616-1-2-.35. Specifically, "[a]fter a 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." *Id.* After the close of Petitioners' case, Respondent moved for involuntary dismissal. For the reasons that follow, Respondent's motion will be granted.

The purpose of IDEA is to "ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for future education, employment, and independent living . . . ." 20 U.S.C. § 1400(d)(1)(A). "To meet its substantive obligation [to provide a FAPE], a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017)

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 [the] child" by filing a due process complaint. 20 U.S.C. § 1415(b)(6)(A); *Shaffer v. Weast*, 546 U.S. 49, 62 (2005). The "[IDEA] 'creates a presumption in favor of the education placement established by a child's IEP, and the party attacking its terms bears the burden of showing why the educational setting established by the IEP is not appropriate.'" *Id.*; see Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) ("The party seeking relief shall bear the burden of persuasion with the evidence at the administrative hearing."). Thus, in this case, Petitioner bears the burden of persuasion and must produce sufficient evidence to support a violation of IDEA.

As noted above, Petitioner's Complaint consists of the due process hearing request form used by the District. On the form, Petitioner checked boxes regarding educational placement,


and the provision of a FAPE. Additionally, Petitioner included a paragraph in which she expressed her disagreement with [REDACTED] being placed in a self-contained classroom and her disagreement with the December 6, 2018 IEP.

Petitioner [REDACTED] testified generally that she disagreed with [REDACTED] being placed in a self-contained classroom and that she disagreed with the December 6, 2018 IEP. However, she presented insufficient evidence showing that [REDACTED]'s placement was inappropriate. Further, she failed to present any facts or evidence showing that the December 6, 2018 IEP was not reasonably calculated to enable [REDACTED] to make progress in light of his circumstances. *Endrew F.*, 137 S. Ct. at 999. Petitioner's generalized assertions failed to establish a violation of IDEA.<sup>3</sup>

#### **Decision**

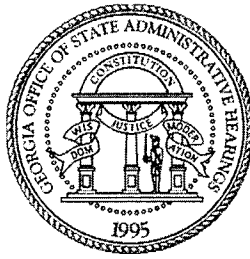
For the foregoing reasons, this tribunal finds that Petitioners have failed to prove a violation of IDEA. Accordingly, Petitioners' prayers for relief are **DENIED** and Petitioners' Complaint is **DISMISSED**.

**SO ORDERED, this 2<sup>nd</sup> day of April, 2019.**

  
**STEPHANIE M. HOWELLS**  
**Administrative Law Judge**

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<sup>3</sup> The undersigned recognizes that Petitioner is advocating for her son and applauds her for doing so. Nevertheless, Petitioner's assertions were not supported by facts and evidence sufficient to meet her burden of proof.



## **NOTICE OF FINAL DECISION**

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

### Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(3). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov); Fax: 404-818-3702; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

### Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.