

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



FILED
OSAH

SEP 30 2014

█, Petitioner,
v.
PAULDING COUNTY SCHOOL DISTRICT,
Respondent.

Docket No.
OSAH-DOE-SE-█-110-KENNEDY
14-293592

K. Westray
Kevin Westray, Legal Assistant

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS PETITIONER'S COMPLAINT

In December 2013, the parties executed an Individual Education Program (IEP) with the goal of having Petitioner transition from █ the Florida residential treatment facility Petitioner was attending, to East Paulding Middle School, his home school, following a three-part transition period.¹ Petitioner successfully completed two of the three transition periods. Petitioner was unable to complete the third and final transition period that was scheduled to take place between February 9 and February 16, 2014. When Respondent sought to terminate payment of Petitioner's residential placement effective February 22, 2014, despite Petitioner not having completed the third part of the transition period, Petitioner filed a Due Process Complaint. Petitioner, at that time, was in agreement with the IEP goal to transition Petitioner to his home school, but desired for the transition period to be fully completed as contemplated in his most recent IEP. The crux of Petitioner's complaint was that Respondent was not honoring the transition period agreed upon in the IEP. The relief sought by Petitioner was "to have the opportunity to transition back home permanently the way his IEP team agreed upon in January with regard to the number of visits and the duration of those visits."

Following a preliminary hearing held on May 9, 2014, this Court issued an Order granting the relief sought by Petitioner. Specifically, the Court ordered that the three transition periods that had been agreed upon in Petitioner's most recent IEP be implemented, in full. This Court further set out the recommended transition period dates, which provided the specific number of visits and the duration of the visits that had been agreed upon by Petitioner's IEP

¹ At that time, the parties agreed that Petitioner's home school, East Paulding Middle School, was the most appropriate least restrictive environment.

14-293592

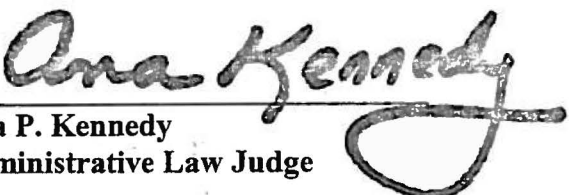
team. The transition period was to begin August 7, 2014. The case remained pending to allow the transition period to be completed.

On August 28, 2014, Respondent filed a Motion to Dismiss, or in the alternative, Motion for Relief from Court Requirement Regarding Transition Period, alleging that Petitioner had failed to comply with this Court's Order by failing to produce the child for the first and second transition periods that were to take place August 7 and August 21.

Petitioner filed his response on September 10, 2014. Petitioner explained that he no longer desires to transition to his home school as had been agreed upon by his IEP team to allow him to move into the Least Restrictive Environment. Petitioner further explained that he has no intention of complying with the Court's Order for the transition period to be completed as agreed upon by the IEP team. Instead, on August 2, 2014, Petitioner advised Cliff Cole, Respondent's Superintendent, of Petitioner's desire to transition to [REDACTED] a private day school located in Roswell, Georgia, at Respondent's expense before considering a transition to Petitioner's home school. Petitioner was under the belief that "it was decided that [Respondent] would take [Petitioner's] position under advisement, and that the best idea would be to reconvene [REDACTED] Team for an actual IEP. The date of August 19 was tentatively decided on." Even if Respondent agreed to consider Petitioner's request and schedule an IEP meeting, there is no indication that Respondent did not intend for the transition periods to be followed as set forth in the Court's Order. Following the August 2, 2014 meeting with Mr. Cole, Petitioner voluntarily chose to not participate in the August 7 transition period, nor has Petitioner indicated any intention to transition to his home school as set forth in the Court's June 26, 2014 Order that had provided the relief sought in Petitioner's complaint.

After careful consideration, the court finds that Petitioner has willfully failed to comply with this Court's June 26, 2014 Order without good cause being shown for Petitioner's willful non-compliance. Based on Petitioner's failure to comply with the Court's June 26, 2014 Order that granted the relief Petitioner sought, and for good cause shown, the Court hereby GRANTS Respondent's Motion to Dismiss Petitioner's Due Process Complaint with prejudice.

SO ORDERED, this 30th day of September, 2014.



Ana P. Kennedy
Administrative Law Judge