BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]	:	
Plaintiff,	:	
	:	
v.	:	**Docket No.:**
	:	**OSAH-DOE-SE-1415045-67-Howells**
GWINNETT COUNTY SCHOOL DISTRICT,	:	
Defendant.	:	

FINAL DECISION AND ORDER GRANTING INVOLUNTARY DISMISAL

Plaintiff, [redacted] is a student eligible for services under the under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA").[1] On October 18, 2013, Plaintiff [redacted] by and through his parent, filed a due process hearing request ("Complaint") contending that Defendant Gwinnett County School District ("Defendant" or "District") violated his rights under IDEA related to educational placement, location of his services, and the provision of a free appropriate public education ("FAPE").[2] The District filed its response on October 30, 2013.

The hearing in this matter was initially set for November 25, 2013. On October 29, 2013, the District requested a continuance of the hearing date because many of its witnesses were going to be unavailable for the scheduled hearing date. The District's motion was granted and the hearing was continued to December 3, 2013. At the hearing, Plaintiff's father ("Mr[redacted] represented Plaintiff and testified on his behalf. Mr. [redacted] presented no other testimony or evidence. At the close of Plaintiff's evidence, the District moved for involuntary dismissal. The undersigned notified the parties that the remainder of the hearing would be continued so that the

[1] 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).

[2] Although Plaintiff checked a box regarding "Evaluation" on his Complaint, Plaintiff stated no facts regarding an evaluation or lack thereof in his Complaint. Nor did he present any evidence regarding any evaluation.

District's motion could be considered.[3] Additionally, the District was directed to file a written motion for involuntary dismissal by December 18, 2013. Plaintiff was granted until December 27, 2013 to file a response.[4] For the reasons stated below, Defendant's motion for involuntary dismissal is **GRANTED**.

Plaintiff's Complaint

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

> √ Evaluation (process of assessment/testing of the child)
>
> √ 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).

(Complaint, p.2.) In addition to the checked boxes, Plaintiff described the facts and details related to his identified concerns:

> As of November 2012, Gwinnett County Public Schools has refused to identify an appropriate educational venue for [redacted] was physically abused at both the Marcus Autism Center and at Hooper Renwick School. At Hooper Renwick, [redacted] was locked in a closet for approximately six hours.[5]

---

[3] Because the District had two witnesses present at the hearing, and in the interest of judicial economy, the District requested and was allowed to take the testimony of those witnesses on the first day of the hearing, notwithstanding its motion for involuntary dismissal.

[4] Plaintiff has not filed a response to the District's motion.

[5] At the hearing, Mr. [redacted] acknowledged that the "closet" was a room approximately six feet by ten feet. (Tr. 34-35.) He presented no other evidence that Plaintiff had been "locked in a closet for approximately six hours" other than his own assertions. Although Mr. [redacted] testified that he observed the "closet" in which [redacted] had been detained, his

(Complaint, p.2.)[6] In the section of the form where the complaining party is directed to describe a proposed resolution, Plaintiff's parent stated as follows:

> My son does have behavioral problems that I would like to see him get help for. GCPS has never provided [redacted] with help. Instead forcing him to go to Marcus Autism Center and insisting he attend "school" at Summit Ridge, which does not have proper facilities for treating children with Autism.

(Complaint, p. 2.)

Findings of Fact

1.

Plaintiff is an [redacted] year old student eligible to receive special education services under two IDEA eligibility categories, autism spectrum disorder and speech language impairment.[7] (D. 7.) He has received special education services through an individualized education program ("IEP") for several years. (D. 63, 80.)

2.

In October of 2009, due to an increase in aggressive behaviors, Plaintiff's IEP team recommended that Plaintiff be placed at the Marcus Center. (Tr. 53-55, 97, 100; D. 79.) Although Plaintiff's parents initially agreed to the IEP, Plaintiff's parents withdrew Plaintiff from the Marcus Center in March 2010. (D. 2, 80.)[8]

---

testimony that [redacted] had, in fact, been locked in a closet, is based, in part, on hearsay, as he was not present when the alleged event occurred.

[6] Consistent with federal regulation, the subject matter of the hearing was limited to the issues raised in Plaintiff's Complaint. *See* 34 C.F.R. § 300.511(d).

[7] Plaintiff turned [redacted] on [redacted]. (Tr. 24-25; D. 7.) At the time of the hearing, he was [redacted] years old. (*Id.*)

[8] Mr. [redacted] asserted that Plaintiff was being abused at the Marcus center. However, other than conclusory assertions that Plaintiff was abused, Mr. [redacted] provided very little substance concerning his assertions. For example, he claimed that Plaintiff was abused by the Marcus Center staff when they stood in very close proximity to Plaintiff and redirected him or made him do something that he did not want to do. (Tr. 56.)

3.

Subsequently, Plaintiff was evaluated at the District's expense by an independent psychiatrist, Dr. Joseph Thompson. (D. 77-83.) Dr. Thompson recommended that Plaintiff participate in a program such as the Marcus Center, to learn better coping and social skills. (D. 83.) Dr. Thompson also recommended that the family receive "wrap-around services that could include community intervention and therapy," which may assist the parents to "establish more control in the household." (Tr. 106-107; D. 83.)

4.

In February 2011, Plaintiff was placed in a separate day program within the Gwinnett County Public Schools (i.e., Hooper Renwick School) and received all instruction in the special education setting. (D. 1-5, 40-41; Tr. 54, 114-117.)

5.

In the fall of 2012, while a student at Hooper Renwick, Plaintiff's verbal and physical aggression increased in severity and frequency. (D. 7-15, 34-41.) In particular, there was an increase in grabbing, hitting, pushing, and kicking.[9] (D. 36.) This increase in aggressive behavior was directed at the staff and students. (D. 3, 41, 162-64, 262-63.) Additionally, there were instances when Plaintiff would elope from the school. (D. 36.)

[9] Mr. [redacted] acknowledged that [redacted] has behavior problems. (Complaint p. 2.) He also acknowledged that Plaintiff has thrown things in anger and has struck him before. (Tr. 32-33, 102-03.) Finally, Mr. [redacted] acknowledged that during a May 2013 IEP meeting Plaintiff made the statement that he wanted revenge and that he "wants to fuck the school system," and that he indicated that he wanted to get a can of Raid and light it on fire at the school. (D. 1-5; Tr. 59, 70-71.) Despite personally observing some of Plaintiff's physically and verbally aggressive behavior, Mr. [redacted] downplays or refuses to believe the District's accounts of Plaintiff's behavior. (Tr. 25, 43-49, 50-51.)

6.

Accordingly, Plaintiff's IEP team convened a meeting on November 1, 2012 to discuss Plaintiff's behavior and consider Plaintiff's educational placement. (D. 7-15, 34-39.) At the November IEP meeting, Plaintiff's IEP team recommended placement in a therapeutic day program outside of Gwinnett County Public Schools, identifying Summit Ridge Hospital or Peachford Hospital as possible locations. (D. 7-15, 34-41.) The team noted that due to the increase in Plaintiff's aggressive behaviors, Plaintiff needed more intensive support than Hooper Renwick could provide. (D. 34-39.)

7.

Although Mr. [redacted] signed and consented to the November 1, 2012 IEP, Plaintiff's parents have subsequently refused for Plaintiff to attend Summit Ridge or Peachford, or to continuing treatment at the Marcus Center. (D. 2, 3, 15; Tr. 12, 15.)

8.

Mr. [redacted] asserts that the District refuses to provide an "appropriate educational venue" for [redacted] He further asserts that Summit Ridge Hospital and Peachford Hospital are not appropriate educational venues for [redacted] (Tr. 12, 110.) Specifically, he asserts that Plaintiff should be educated in a school setting as opposed to a therapeutic day program outside of the Gwinnett County Public Schools. (Tr. 12.) However, he presented no admissible evidence or testimony, other than his own conclusory assertions, to support his position.[10] Nor did he present any

[10] As to the Summit Ridge Hospital, Mr. [redacted] offered hearsay testimony of an alleged conversation with a staff member at Summit Ridge, whose name he could not recall, and his own observations of Summit Ridge's website. (Tr. 13-14, 77-78.) With regard to Peachford Hospital, Mr. [redacted] offered no reasons other than the distance from his home. (Tr. 12.)

evidence showing that the amount of time [redacted] spent in the special education setting or the goals and objectives in [redacted]'s IEP were inappropriate.[11]

Conclusions of Law

1.

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, Plaintiff bears the burden of proof as to all issues for resolution. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005).

2.

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 Plaintiff presented his evidence in this matter, the District moved for involuntary dismissal. For the reasons that follow, the District's motion will be granted.

3.

As noted above, Plaintiff's Complaint consists of the due process hearing request form used by the District. On the form, Plaintiff checked boxes regarding evaluation, educational placement, and the provision of a free appropriate public education ("FAPE").[12] Plaintiff did not present any evidence regarding the propriety of the proposed IEP services or the amount of time Plaintiff spent in special education as opposed to general education. In fact, Mr. [redacted] acknowledged the benefits of a therapeutic program for [redacted] While he asserted that the

[11] In fact, Mr. [redacted] agreed that [redacted] could benefit from psychiatric help on a daily basis, participation in therapeutic groups to learn appropriate social skills, and instruction in a safe environment where the risk of elopement would be reduced. (Tr. 74-75.)

[12] As noted above, Plaintiff presented no evidence regarding any evaluation or lack thereof.

proposed educational venue was inappropriate, he presented no admissible evidence other than his own unsupported opinions about the proposed location where the IEP services would be implemented.

Plaintiff Failed to Establish that the Proposed Placement is Inappropriate

4.

In this case, the Plaintiff challenges his educational "placement" because he believes that the selected IEP services should be provided in a school setting, as opposed to a therapeutic day program outside of the Gwinnett County Public Schools.

5.

Under IDEA, states are required to ensure that "[a] free appropriate public education is available to all children with disabilities." 20 U.S.C. § 1412(a)(1)(A). "The purpose of the IDEA generally 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 further education, employment and independent living . . . .'" *C.P. v. Leon County Sch. Bd.*, 483 F.3d 1151, 1152 (11th Cir. 2007) (*quoting* 20 U.S.C. § 1400(d)(1)(A)). In order to achieve this goal, a written IEP specifically tailored to each disabled student delineates the special education services that the student must receive in order to obtain a FAPE. *See* 20 U.S.C. § 1414(d)(1)(A). The school district must implement the student's IEP in the least restrictive environment possible by educating the student "to the maximum extent appropriate" with non-disabled students.[13] 20 U.S.C. § 1412(a)(5)(A).

[13] To the extent Plaintiff's Complaint could implicate the least restrictive environment, the undersigned notes that Plaintiff presented no evidence that he could appropriately be educated within the general education setting. In fact, the evidence in the record supports a finding to the contrary. Furthermore, at Hooper Renwick, Plaintiff was in a self-contained classroom for children with autism. Thus, the proposed placement at Summit Ridge or Peachford is no more restrictive, under IDEA, than Plaintiff's previous placement, as his placement at Hooper Renwick was entirely with children that had disabilities.

6.

Defendant's selection of the physical location of [redacted]'s special education services is simply not a matter to be determined under IDEA. The Office of Special Education Programs ("OSEP"), which provides federal policy guidance regarding the provision of special education services under IDEA, considered a similar situation in *Letter to Fisher*, 21 IDELR 992 (OSEP July 6, 1994). There, OSEP advised that a change in the physical location of the facility where services would be provided did not amount to a change in a student's educational placement. *Id.*; *see also Letter to Veazey*, 37 IDELR 10 (OSEP Nov. 26, 2001) ("the assignment of a particular school or classroom may be an administrative determination"); *Dep't of Educ. v. T.F.*, No. 10-00258 AWT-BMK, 2011 U.S. Dist. LEXIS 110307, at *24 (D. Haw. Aug. 30, 2011) (stating "the Ninth Circuit concluded that 'educational placement' means the general educational program of the student."); *L.M. v. Pinellas County Sch. Bd.*, No. 8:10-cv-539-T-33TGW, 2010 U.S. Dist. LEXIS 46796, at *3 (M.D. Fla. Apr. 11, 2010) ("'educational placement' . . . refers to the educational program and not the particular institution or building where the program is implemented."); *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 383 (5th Cir. 2003); *Hill v. School Bd. for Pinellas County*, 954 F. Supp. 251, 253-54 (M.D. Fla. 1997), *aff'd*, 137 F.3d 1355 (11th Cir. 1998).

7.

Because Plaintiff failed to present any admissible evidence challenging his educational placement (i.e., his educational program) and because the District is entitled to choose the location where his IEP services are provided, Plaintiff has failed to show by a preponderance of the evidence that the District's proposed placement is inappropriate.

Plaintiff Offered No Evidence that the Proposed IEP Denies Him a FAPE

8.

IDEA requires school districts to provide disabled children with an IEP that is "reasonably calculated to enable the child to receive educational benefit." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982). It does not require school districts to maximize a child's potential. *Id.* at 200. Rather, IDEA only requires that students be provided with "the basic floor of opportunity." *Id.* at 201. "So long as the child's IEP provides some educational benefit, 'under the IDEA, there is no entitlement to the best program.'" *M.W. ex rel. Wang v. Clarke Cnty. Sch. Dist.*, No. 3:06-CV-49(CDL), 2008 U.S. Dist. LEXIS 75278, at *60 (M.D. Ga. Sept. 29, 2008) (quoting *M.M. ex rel. C.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1102 (11th Cir. 2006).

9.

Here, Plaintiff offered no evidence that the proposed IEP was not reasonably calculated to provide him with educational benefit. The evidence in the record demonstrated that Plaintiff exhibited persistent aggressive and disruptive behaviors and elopement, and that he needed therapeutic support for his behaviors. Due to the increase in concerning behaviors, Plaintiff's IEP team, including Plaintiff's parents, agreed that Plaintiff required additional supportive services.

10.

Plaintiff presented no credible evidence that he would not benefit from the program the District offered at the November 1, 2012 and May 10, 2013 IEP meetings. In fact, Mr. [redacted] acknowledged that Plaintiff had behavioral problems and that he would benefit from therapeutic services. Rather than challenging the District's proposed educational program (i.e., the services), Plaintiff's arguments focused exclusively on his family's disagreement with the location of the

program. For these reasons, Plaintiff failed to prove that the District's proposed IEP denies him a FAPE.

Decision

For the foregoing reasons, this tribunal finds that Plaintiff has failed to prove that the District's proposed placement was inappropriate or that the District denied Plaintiff a FAPE. Accordingly, Plaintiff's prayers for relief are denied.

SO ORDERED, this 31st day of December, 2013.

Stephanie M. Howells

STEPHANIE M. HOWELLS
Administrative Law Judge