BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted] by and through her parent, [redacted] and [redacted]	:	
	:	
	:	
Plaintiffs,	:	**Docket No.:**
	:	**OSAH-DOE-SE-1306598-18-Miller**
v.	:	13-280494
	:	
BUTTS COUNTY SCHOOL DISTRICT,	:	
	:	
	:	
Defendant.	:	

FINAL DECISION
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

For Plaintiff:

Ronny E. Jones, Esq.
Law Office of Ronny E. Jones

For Defendant:

David M. Waldroup, Esq.
Smith, Welch, Webb & White, LLC

I. SUMMARY OF PROCEEDINGS

[redacted] is a student residing in Butts County, Georgia, who is eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On August 10, 2012,[1] [redacted] and her parent, Plaintiffs herein, filed a Due Process Hearing Request ("Complaint"), contending that the Defendant Butts County School District ("District") has failed to provide [redacted] with a free appropriate public education as required under IDEA. The Plaintiffs seek an award of punitive damages and an order requiring independent oversight of the District's special education program.

[1] The Defendant received the Complaint on August 16, 2012. See Court file.

On September 14, 2012, following a prehearing conference held on September 4, 2012, the District moved to dismiss the Plaintiffs' Complaint. The Plaintiffs responded on September 28, 2012. The District submitted its reply brief, accompanied by a supporting affidavit, on October 12, 2012. The Plaintiffs have not filed a further response or otherwise disputed the contents the District's affidavit.

In its Motion, the District contends that the Complaint should be dismissed on two grounds: first, because the Plaintiffs' claims are barred by the statute of limitations; and second, because the Complaint fails to request any relief permitted under IDEA. After careful consideration of the parties' arguments and submissions, and for the reasons stated herein, the District's Motion is **GRANTED**.

II. LEGAL STANDARDS FOR DISMISSAL OR SUMMARY DETERMINATION

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 O.C.G.A. § 9-11-12(b); Ga. Comp. R. & Regs. r. 616-1-2-.02(3). In this case, however, because a ruling on the District's Motion to Dismiss requires consideration of affidavits and other evidence outside the pleadings, it is more appropriately characterized as a Motion for Summary Determination and will be treated as such. Ga. Comp. R. & Regs. r. 616-1-2-.15. See also O.C.G.A. § 9-11-56; Dept. of Transp. v. Carr, 254 Ga. App. 781 (2002).

Summary determination in this proceeding is governed by Office of State Administrative Hearings ("OSAH") Rule 15, which provides, in relevant part:

> A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

Ga. Comp. R. & Regs. r. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); See generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-305 (2206) (noting that a summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary determination.)

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination.

Ga. Comp. R. & Regs. r. 616-1-2-.15(3). See Lockhart v. Dir., Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)). In this case, no genuine issues of material fact exist, and the District is entitled to judgment as a matter of law.

III. LEGAL ANALYSIS

A. The Complaint Is Barred by the Statute of Limitations.

The Complaint asserts that the Plaintiffs should be afforded relief under IDEA because the District failed to provide [redacted] a student with autism, with a free appropriate public education ("FAPE"). To support this assertion, the Plaintiffs contend, first, that the District refused to

allow [redacted] to attend school during the regular school day; and second, that the District failed to provide speech therapy services during the one hour per day that she was permitted to attend a school aftercare program. Although the Complaint does not set forth the relevant time frame, it is undisputed that the District has provided services to [redacted] during the regular school day since the 2010-11 school year. The last school year during which [redacted] was served primarily through home-based services was the 2009-10 school year. (Affidavit of Jessica Key, ¶ 5.) Therefore, because the Plaintiffs' claims are necessarily premised on events that took place prior to August 2010, the Complaint is time-barred.

Congress has provided the following statute of limitations for impartial due process hearings pursuant to IDEA:

> Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part [20 USCS §§ 1411 et seq.], in such time as the State law allows.

20 U.S.C. § 1415(f)(3)(C); see also 34 C.F.R. § 300.507(a)(2). Georgia law also provides for a two-year statute of limitations. Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(a). In this case, the Plaintiffs did not file a due process hearing request until August 10, 2012, more than two years after [redacted] began attending school during the regular school day. The only question, then, is whether one of the exceptions to the statute of limitations applies.

IDEA provides two exceptions to the statute of limitations for impartial due process hearings:

> Exceptions to the timeline. The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—
>
> (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

(ii) the local educational agency's withholding of information from the parent that was required under this part [20 USCS §§ 1411 et seq.] to be provided to the parent.

20 U.S.C. § 1415(f)(3)(D); see also 34 C.F.R. § 300.507(a)(2); Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(a). Here, the Plaintiffs do not contend that limitations period must be tolled based on either exception. Accordingly, the Complaint does not raise any justiciable issues under IDEA, and the District is entitled to judgment as a matter of law.

B. The Relief Sought by the Plaintiffs Is Not Authorized Under IDEA.

The Plaintiffs' Complaint seeks punitive damages "in consideration of the emotional damage this has caused within [the Plaintiffs'] family," as well as "a program started wherein an unbiased outside party [is] employed to oversee the accommodations for all special needs students" and a removal of federal funding if the District fails to implement the recommendations of the independent overseer. However, these forms of relief are not permitted under IDEA.

Punitive damages are simply not authorized under IDEA. Rather, "the only appropriate damages for violations of IDEA are reimbursement type damages that compensate the parents of a handicapped child for the failure of the school to provide a "free appropriate education" as mandated by IDEA." Whitehead v. School Bd., 918 F. Supp. 1515, 1519 (M.D. Fla. 1996). See School Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 369 (1985); Powell v. Defore, 699 F.2d 1078, 1081 (11th Cir. 1983); Manecke v. School Bd., 762 F.2d 912, 915 n.2 (11th Cir. 1985). The Plaintiffs therefore cannot be awarded punitive damages in this proceeding.

Systemic relief is similarly unavailable. The statutory procedure for due process hearings was designed to resolve disputes between an individual student and the local education agency. Only a parent or authorized guardian may bring a due process complaint on behalf of a child. 34

C.F.R. §§ 300.507(a), 300.30. The complaint that initiates the hearing must include "a description of the nature of the problem of the child relating to such proposed initiation or change [relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child]." 20 U.S.C. § 1415(b)(7)(A)(ii)(III) (emphasis added); see also 20 U.S.C. § 1415(b)(6)(A). Further, the hearing "is designed to provide a parent or [local educational agency] an avenue for resolving differences with regard to the identification, evaluation, placement or provision of a (FAPE) to a child with a disability." Ga. Comp. R. & Regs. r. 160-4-7-.12(3) (emphasis added). Nothing in the governing statutes or regulations authorizes this Court to award systemic relief for alleged violations of IDEA on behalf of unnamed students. Consequently, to the extent the Complaint seeks relief that cannot be awarded under IDEA, the District is entitled to judgment as a matter of law.

IV. ORDER

For the reasons set forth above, the District's Motion to Dismiss is hereby **GRANTED**, and judgment is entered in favor of the District as a matter of law.

SO ORDERED, this 7th day of November, 2012.

KRISTIN L. MILLER
Administrative Law Judge