

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**



FILED  
OSAH

MAR 26 2019

[REDACTED] by and through [REDACTED]; and [REDACTED] :  
 Petitioners, :  
 :  
 v. :  
 :  
 ATLANTA INDEPENDENT SCHOOL :  
 SYSTEM, :  
 Respondent. :

**Docket No.:**  
**1924276-OSAH-DOE-SE-60-Howells**

Kevin Westray, Legal Assistant

**FINAL DECISION AND  
ORDER GRANTING INVOLUNTARY DISMISAL**

Petitioner, [REDACTED] is a student eligible for services under the under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”).<sup>1</sup> On [REDACTED], Petitioner [REDACTED] by and through his parent, filed a due process hearing request (“Complaint”) contending that Respondent Atlanta Independent School System (“Respondent” or “District”) violated his rights under IDEA related to identification of [REDACTED] disability, evaluation of [REDACTED] educational placement of [REDACTED] and the provision of a free appropriate public education (“FAPE”).<sup>2</sup> The District filed its response on [REDACTED].

The hearing in this matter was initially scheduled for [REDACTED] as an expedited hearing based on a placement purportedly related to a manifestation determination.<sup>3</sup> At some

<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).

<sup>2</sup> Although Petitioner checked boxes regarding “evaluation,” “identification,” “educational placement,” and FAPE, other than a conclusory statement that [REDACTED] should have had a full evaluation, Petitioner presented no evidence or facts regarding any deficiencies of any evaluation. Similarly, Petitioner presented no evidence regarding a failure to identify [REDACTED] disability, no evidence of how any proposed placements were not appropriate, and no evidence showing a failure to provide him with a FAPE.

<sup>3</sup> On [REDACTED] Respondent filed a Status Report notifying the court that Petitioners had not properly served Respondent until [REDACTED] Respondent requested that the timelines in this matter be recalculated based on the actual service date. As a result, the hearing was continued to [REDACTED].

point the homebound placement that was part of the Complaint was no longer in place.<sup>4</sup> Therefore the expedited nature of the matter dissipated. The hearing was continued to allow the parties to participate in mediation and attempt to resolve the issues raised in the Complaint.<sup>5</sup> The hearing was reset for [REDACTED].

On the day of the hearing, Petitioner [REDACTED] testified about a [REDACTED] manifestation determination hearing.<sup>6</sup> She testified about being “blindsided” when she learned that they were discussing an incident that occurred on [REDACTED] as opposed to an incident that occurred on [REDACTED]. Petitioner [REDACTED] also testified that the incident forming the basis of the manifestation determination was determined to be a manifestation of [REDACTED] disability. Petitioner testified that she believed that the incident forming the basis of the manifestation determination was due to the school’s failure to implement [REDACTED] IEP, change his BIP, or to conduct a full evaluation.<sup>7</sup> She further testified that during the manifestation determination meeting, Respondent offered various proposed placement options. Respondent offered a placement at [REDACTED], a placement at [REDACTED] for half of the day and at [REDACTED] for half of the day, a [REDACTED] placement at [REDACTED] School, and a residential placement at [REDACTED]. Petitioner disagreed with all of the proposed placement options. After Petitioner [REDACTED] disagreed with the proposed placement options, she testified that [REDACTED] was placed in a homebound placement.<sup>8</sup> Petitioner asserted that no teachers came to the home during [REDACTED] homebound placement from [REDACTED] through [REDACTED]. She denied that she refused for teachers to

<sup>4</sup> Is it unclear whether [REDACTED] placement was “homebound” or “homebased,” as a homebound placement requires a medical referral form and there was no evidence that [REDACTED] had a medical condition requiring him to be restricted to his home for a period of time. See Ga. Comp. R. & Regs. 160-4-2-.31(2)(a)(4). On the other hand, homebased instruction can be considered by the IEP team as a short-term placement for reasons other than medical concerns. See Ga. Comp. R. & Regs. 160-4-7-.07(3)(d)(4).

<sup>5</sup> The parties did participate in mediation; however, it was unsuccessful.

<sup>6</sup> Petitioner was represented by attorney [REDACTED] at the [REDACTED] manifestation determination meeting.

<sup>7</sup> Petitioner provided no testimony as to how [REDACTED] IEP was not implemented, how his BIP should have been changed, or what evaluation he did not receive.

<sup>8</sup> Given the absence of any evidence regarding a medical condition, it appears that [REDACTED] placement may have been *homebased* as opposed to *homebound*.

come to the home. However, she acknowledged that one teacher called and she told that teacher that [REDACTED] was going to be attending [REDACTED], implying that it was unnecessary for the teacher to come to the home. (Testimony of Petitioner [REDACTED])

At the time of the incident that formed the basis of the manifestation determination meeting, Petitioner was living in the area serviced by [REDACTED]. However, on [REDACTED] Petitioner moved to the area serviced by [REDACTED]. At the hearing Petitioner [REDACTED], testified that she was unhappy that Respondent presented her papers which withdrew [REDACTED] from [REDACTED] as of [REDACTED] because she did not move until [REDACTED]. She acknowledged that [REDACTED] was the last day of school. (Testimony of Petitioner [REDACTED].)

Aside from Petitioner's testimony, she 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.**

### **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:

√ Identification (related to identification of the child's disability)

√ 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).

(See Complaint.) In addition to the checked boxes, Petitioner [REDACTED] included some hand-written facts and details regarding her concerns. Most of her concerns related to the [REDACTED] manifestation determination. (*Id.*) Additionally, she described concerns about a tribunal hearing being cancelled, some concerns about alleged changes to [REDACTED] program, and an incident when [REDACTED] allegedly [REDACTED] an attempt to hurt [REDACTED] which Petitioner [REDACTED] denies happened. (*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 Petitioner [REDACTED] testified, 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).

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 the allegations raised in the Complaint.

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 evaluation, identification, educational placement, and the provision of a FAPE. While Petitioner made the conclusory assertion that the incident that formed the basis of the manifestation determination was due to Respondent’s failure to implement [REDACTED] IEP or change his BIP, she presented no facts or evidence regarding how or in what way Respondent failed to implement [REDACTED] IEP or in what way Respondent should have changed his BIP.

Similarly, Petitioner did not present any facts or evidence regarding how any previous evaluation of [REDACTED] was purportedly deficient, how Respondent failed to identify [REDACTED] disability, how his placement was inappropriate, or in what way [REDACTED] was denied a FAPE. In fact, Petitioner presented no evidence other than her own unsupported opinions. Petitioner’s generalized, unsupported grievances failed to establish a violation of IDEA.

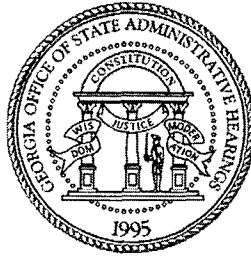
**Decision**

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

**SO ORDERED, this 26<sup>th</sup> day of March, 2019.**

A handwritten signature in black ink, appearing to read 'Stephanie M. Howells', written in a cursive style.

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



## 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.