IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

E. B., by and through his parents, R.B. and C.B., Plaintiffs,	:	Docket Nos.:
	:	OSAH-DOE-SE-[redacted]-Walker
v.	:	OSAH-DOE-SE-[redacted]-Walker
_____ COUNTY SCHOOL DISTRICT, Defendant.	:	

ORDER

I. Background

Plaintiff E.B. is six years old. He has currently been found eligible to receive special education services by the Defendant, the _____ County School District (hereinafter the "School District"). On January 18, 2013, Plaintiffs filed a due process hearing request pursuant to the Individuals with Disabilities Education Improvement Act (hereinafter "IDEA") against the School District, styled as *E.B. v. _____ County School District*, OSAH-DOE-SE-[redacted]-Walker (hereinafter "E.B. 1"). On February 25, 2013, Plaintiffs amended their due process hearing request. The thrust of the due process hearing request was that Plaintiff E.B. disagreed with a Functional Behavioral Assessment performed by the School District and objected to Defendant's attempt to place him in the HAVEN program.

On July 23, 2013, the due process hearing commenced. On July 26, 2013, after the proceedings had started and several witnesses in the case had testified, the parties submitted a signed settlement indicating that "[the parties] have an agreement."[1] Pursuant to GA. COMP. R. & REGS. § 616-1-2-.17(2), the undersigned dismissed the matter with prejudice on August 19, 2013.

[1] Shortly after tendering the settlement, the School District filed a Request for an Emergency Hearing indicating that despite the representation to the undersigned that the parties had reached a settlement, the settlement agreement had not been finalized.

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On August 23, 2013, only four days after the undersigned dismissed E.B. 1, Plaintiffs filed another due process hearing request, styled *E.B. v.* _____ *County School District*, OSAH-DOE-SE-[redacted]-Walker (hereinafter "E.B. 2"). The basis for the due process hearing request was that "Plaintiffs have tried repeatedly in good faith to resolve this matter, but Defendant _____ County School District ("CCSD") continues to attempt to alter a settlement agreement entered by the parties on July 26, 2013, has breached the agreement and continues to do so, refuses to comply with the agreement and has damaged Plaintiffs."

In the due process hearing request, the Plaintiffs requested injunctive relief, pursuant to the IDEA and the laws of the State of Georgia, requiring the School District to immediately comply with all of the terms of the agreement reached on July 26, 2013, and requesting "recovery of all damages allowed by law for the breach of the agreement, including but not limited to their attorney's fees for the breach." The due process hearing request also stated that "E.B. is entitled to compensatory education for a period of time from the beginning of school until his program is in place and until program and placement is implemented properly and he receives quality services...E.B. is entitled to additional hours of oversight, program development, and training by Dr. Mueller, given the breach of contract as set forth above."

Thirteen days later, on September 6, 2013, Plaintiffs filed yet a third due process hearing request, styled *E.B. v.* _____ *County School District*, OSAH-DOE-SE-[redacted]-Walker, again alleging that Defendant had breached the settlement agreement entered into by the

[2] During the seven months between the filing of the original due process hearing request and dismissal, the parties' attorneys continually accused each other of bad faith and misconduct. *See, e.g., Plaintiff's Motion for Entry of Default Judgment or in the Alternative, an Independent Functional Behavior Assessment* dated May 31, 2013 at p. 2 "[f]rom start to finish, the [School District] has proceeded in bad faith and caused unwarranted and substantial delay...."; *Defendant's Request for Emergency Hearing* dated August 16, 2013 at p. 4, listing multiple allegations of misconduct, and concluding "Plaintiff's counsel refused to properly negotiate... [and has] refused to meet with Defendant to work collaboratively to settle this matter."

parties (hereinafter "E.B. 3"). In the September 6 filing, Plaintiff alleged that the School District continues to deprive E.B. of a free and appropriate education (hereinafter "FAPE"). It charged that since the filing of the E.B. 2 on August 23, 2013, "additional issues have arisen, and they are so serious, another hearing request has had to be asked." Plaintiffs requested that the undersigned find that the School District had had breached its agreement with E.B. and his parents and denied E.B. a FAPE. Plaintiffs moved that E.B. 2 and E.B. 3 be consolidated for hearing. Finding that the actions involved the same parties and underlying facts, the undersigned GRANTED Plaintiffs' motion, issued a prehearing order, and scheduled the hearing to commence on October 2, 2013. The parties have filed a series of prehearing motions, and the undersigned will address each motion in turn.

II. Defendant's Motion to Dismiss Plaintiffs' Due Process Hearing Request

Alleging that all of Plaintiffs' claims in the consolidated filings are predicated upon breach of contract, Defendant moves to dismiss Plaintiffs' due process hearing requests. Defendant notes that Congress has limited the subject matter jurisdiction of administrative law judges in IDEA cases to those issues related 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)(6). In contrast, settlement agreements are contracts "subject to construction by the court," and governed by state contract law. *Flagg Energy Dev. Corp. v. GMC*, 223 Ga. App. 259, 260 (1996). Thus, Defendant argues that breach of contract claims fall within the purview of the state or superior courts of Georgia, and that an Administrative Law Judge has no jurisdiction to enforce settlement agreements.

In its filing, Defendant fails to distinguish, or even mention, several unpublished Eleventh Circuit cases holding that parties are required to exhaust administrative remedies prior

to bringing a claim for the breach of an IDEA settlement agreement. The Eleventh Circuit has interpreted the IDEA's exhaustion requirement as applying to a broad spectrum of claims. *See M.T.V. v. Dekalb County Sch. Dist.,* 446 F.3d 1153, 1158 (11th Cir. 2006). Specifically, the Eleventh Circuit has concluded that when "[a] parent's claim that a school board breached the provisions of a settlement agreement that had resulted from an IDEA due process hearing is also primarily a challenge relating to the provision of a FAPE" such a claim "must be addressed administratively." *Sch. Bd. v. M.M.*, 348 Fed. Appx. 504, 511 (2009) (concluding that breach of settlement claims relate to the FAPE provided pursuant to IDEA). Similarly, in *J.P. v. Cherokee County Board of Education*, the Eleventh Circuit also addressed the exhaustion requirement for a breach of contract claim, noting that the dispute is "'[a]t its heart,... is about a failure to sufficiently provide a [FAPE] to [J.P.] and the adverse educational consequences of that failure.'" 218 Fed. Appx. 911, 913 (2007). The Eleventh Circuit further stated, "Because J.P.'s alleged injuries *primarily* relate to the provision of his FAPE, and thus constitute educational injuries...Plaintiffs were required to exhaust administrative remedies before filing this court action." *Id.*

In its Response to Plaintiffs' due process hearing request, the School District "denies that it has breached any of the terms of any agreement of the parties as the [p]arties have yet to execute a settlement agreement and release that appropriately formalizes the settlement negotiations on July 26, 2013." Thus, in the instant case, the issue before the undersigned is not whether there was a breach of an agreement, but whether in fact the parties had a meeting of the minds such that they entered into a binding settlement agreement in the first instance.[3]

The Eleventh Circuit has acknowledged that a parent's claim regarding the breach of an

[3] This case does not implicate the statutory provisions addressing agreements that arise out of mediation or resolution processes. See 20 U.S.C. §§ 1415(e)(2)(F)(iii); 1415(f)(1)(B)(iii)(II).

IDEA settlement agreement is not always a claim "brought under" IDEA. In *Robert K. V. _____ County Sch. Dist.*, the court addressed whether the plaintiffs were a "prevailing party" for the purpose of awarding attorney's fees. 279 Fed. Appx. 798 (2008). The court determined that "[p]laintiffs prevailed only on a state-law breach of contract claim that by their own admission did not involve IDEA." *Id.* at 801. As "plaintiffs did not prevail on a claim 'brought under' § 1415 of the IDEA" they were not entitled to prevailing party status. *Id.*

As in *Robert K.*, the question of whether or not a binding contract exists between the parties is not a claim relating "to the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education" such that exhaustion is mandated. 20 U.S.C. § 1415(b)(6). In *Bd. Of Educ. v. Rowley*, the Supreme Court noted that "courts lack the specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy." 458 U.S. 176, 208 (1982) (internal quotations and citations omitted). Conversely, determining whether or not the parties reached a settlement agreement does not implicate the "educational expertise [of] state and local agencies, [or the] full exploration of technical education issues related to the administration of the IDEA," *see H.C. v. Colton-Pierrepont Cent. Sch. Dist.*, 341 Fed Appx. 687, 690 (2d Cir. 2009) (internal quotations and citations omitted), but a straightforward application of state contract law. Thus, Plaintiffs' claims, as they relate to the alleged formation of a contract, constitute a state-law claim over which this administrative tribunal has no jurisdiction and are not subject to the exhaustion requirement. However, to the extent that Plaintiffs' claims implicate the provision of a FAPE, these claims survive and will be addressed administratively.[4]

[4] A parent can waive her child's right to FAPE. *See Fitzgerald v. Camdenton R-III Sch. Dist.*, 493 F.3d 773, 775 (8th Cir. 2006). As one court has observed: "We understand that this conclusion means that in some cases parents may waive their child's right to a FAPE under the IDEA through a settlement agreement, yet a hearing officer may nonetheless be required under 20 U.S.C. § 1415(f)(3)(E)(i) to determine if the child received a FAPE before a

III. Request for Additional Hearing Days

On September 11, 2013, the undersigned issued an order notifying the parties that only one day had been allotted for the hearing. If the parties felt that they would need additional time to present their case, the order indicated that they were required to submit of a list of witnesses to be called, the nature of their testimony, and the estimated time of direct examination for each witness.

Plaintiffs have indicated that they may call fourteen witnesses in this case. For each witness, Plaintiffs offered a range of time for direct examination. Taking the longest estimated time offered for each witness, Plaintiffs will need 13.75 hours to present the direct testimony in its case. In their filing, Plaintiffs requested 3.5 days to present their case. Given that the undersigned has dismissed some of Plaintiffs claims, the undersigned expects that the case will take Plaintiffs much less time to present than originally requested, but in any event will certainly not permit Plaintiffs presentation to exceed 3.5 days.

Defendant also submitted its estimation of direct testimony in this case. Defendant indicated it intended to call fourteen witnesses, to take a total of 8.2 hours. Despite the fact that it expects to present approximately only one day of direct testimony, Defendant estimated that it would require 4 to 5 days of hearing. Defendant posits that "it cannot speculate regarding the evidentiary needs that may arise as a result of Plaintiffs' witnesses, [and is thus] unable to estimate the length of their direct examinations." Again, as a number of Plaintiffs' claims have been dismissed, and as Defendant currently only expects to present approximately 8 hours of direct testimony, the undersigned expects that Defendants' presentation will be well under 4 to 5 days. At the close of Plaintiffs' case in chief, the undersigned will require Defendants to

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district court may consider whether the child retained her right to such a FAPE. While such a process may appear to involve the hearing officer's unnecessary expenditures of time and resources, this is the scheme that Congress has created." *J.K. v. The Council Rock Sch. Dist.*, 833 F. Supp. 2d 436, 449 F.9 (E.D. Pa. 2011).

provide a second estimation of its witnesses and their expected length of direct testimony.

As stated in the prehearing order, his hearing will commence on October 2, 2013 at 9:30 a.m. Given the circumstances of this case, the undersigned will hold the hearing from 9:30 a.m. to 8:00 p.m. on October 2, 9:30 a.m. to 4:30 p.m. on October 3, 3:30 p.m. to 9:30 p.m. on October 4, 9:30 a.m. to 8:00 p.m. on October 5, and 9:30 p.m. to 8:00 p.m. on October 6. If additional hearing days are needed, the 9:30 to 8:00 p.m. schedule will continue daily until the hearing is concluded. The parties' request for a scheduling conference via telephone is DENIED.

IV. Plaintiffs' Amended Motion to Exceed Time Limit and Request for Waiver

In the prehearing order issued in this case, the undersigned directed that all direct testimony must be submitted in written form, unless a party certifies prior to the hearing that the direct testimony of the witness will not exceed two hours if the witness is a lay witness and three hours if the witness is an expert witness. Plaintiffs have requested to be relieved of this requirement for Dr. Mueller, certifying that he will be both an expert witness and a lay witness. Under these circumstances, Plaintiffs represent that he will testify for up to four hours on direct examination, not to exceed three hours as an expert witness. Petitioners' Motion to Exceed Time Limit and Request for Waiver is GRANTED.

SO ORDERED, September 24, 2013.

RONIT WALKER
Administrative Law Judge