IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

G.W., by and through K.W.; and K.W.,
Petitioners,

v.

RICHMOND COUNTY SCHOOL DISTRICT,
Respondent.

Docket No.: 1810683
1810683-OSAH-DOE-SE-121-Schroer

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS AND DENYING PETITIONERS' MOTION FOR PARTIAL SUMMARY DETERMINATION

On September 19, 2017, Petitioners filed a request for a due process hearing under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). 20 U.S.C. § 1400 *et seq*. Respondent Richmond County School District ("the District") filed a Response and Motion to Dismiss as Insufficient ("Motion") on September 21, 2017. Petitioners responded to the Motion on September 22, 2017. In addition, Petitioners filed a Motion for Partial Summary Determination on October 16, 2017 and a Corrected Motion for Partial Summary Determination on October 19, 2017. Having carefully read and considered all the pleadings filed by the parties and for the reasons set forth below, the District's Motion is **GRANTED,** and Petitioner's motion for partial summary determination is **DENIED**.

I. BACKGROUND AND SUMMARY OF PROCEEDINGS

1. Petitioner G.W. formerly resided in Richmond County and attended school in the District. He was determined to be eligible for special education services under the category of "Other Health Impairment" and received such services under an Individualized Education Program ("IEP"). (Resp. and Mot. to Dismiss as Insufficient at 4).

2. On or about October 31, 2016, Petitioners filed a due process hearing request (hereinafter

"Complaint 1"), alleging violations of IDEA on the part of the District. Specifically, Petitioners alleged that the District had failed to inform K.W. of her Parental Rights and Responsibilities, provide her with accurate copies of G.W.'s IEP, provide her with RTI meeting records, complete a psychological evaluation, and supply G.W. with adequate materials and/or equipment. Petitioners further alleged that the District had falsified records pertaining to G.W., including his grades, and made unauthorized changes to G.W.'s IEP. (Due Process Hearing Req. filed Oct. 31, 2016).

3. Petitioners filed a second Due Process Hearing Request (hereinafter "Complaint 2") on November 17, 2016. In Complaint 2, Petitioners objected to the District's use of "I-Ready" software as an assessment tool, as well as the District's purported placement of G.W. with 6th, 7th, and 8th graders and failure to abide by the IEP's class size restrictions. Petitioners also included broad, generalized allegations that G.W.'s school lacked sufficient security, failed to ensure that all students were supplied with textbooks, and was under-staffed. (Due Process Hearing Req. filed Nov. 17, 2016).

4. After they were referred to the Office of State Administrative Hearings ("OSAH"), Complaint 1 and Complaint 2 were docketed and eventually assigned to the undersigned administrative law judge. (Resp. and Mot. to Dismiss as Insufficient at 6).

5. In an Order issued December 8, 2016, the Court ruled that only two claims in Complaint 2 could be considered pursuant to the IDEA: (1) Petitioners' claim regarding the sufficiency of the I-Ready software used to evaluate G.W., and (2) Petitioners' claim regarding G.W.'s placement in a multi-grade classroom. The Court dismissed the remaining allegations listed in Complaint 2 without prejudice and consolidated the surviving claims with those listed in Complaint 1 for a hearing to be held January 19-20, 2017. (Order on Sufficiency of Due Process

Complaint and Order of Consolidation, Docket No. OSAH-DOE-SE-1715747-121-SCHROER (Dec. 8, 2016)).

6. The parties entered into a resolution agreement on January 18, 2017 (hereinafter "Resolution Agreement"). Per the terms of the Resolution Agreement, the District agreed to: revise G.W.'s psychological evaluation; review G.W.'s grades and revise them if they were unsupported by "hard copies of grading documents"; provide G.W. with instruction during scheduled school breaks and holidays; provide "compensatory services" through an online tutoring program; provide G.W. with assistive technology; provide the cost of extended school year services "by paying the cost of High School Summer School as recommended by the Parent and/or the Student's school district at the time such services are to be rendered"; continue to provide teachers with instruction regarding I-Ready; and continue to comply with the IDEA and Americans with Disabilities Act and implementing regulations. In exchange, Petitioners agreed to dismiss Complaint 1 and Complaint 2. (Resolution Agreement dated Jan. 18, 2017).

7. In accordance with the Resolution Agreement, Petitioners filed a Notice of Dismissal on January 18, 2017. Accordingly, the Court dismissed Complaint 1 and Complaint 2 with prejudice on January 27, 2017. (Consent Order of Dismissal, Docket Nos. OSAH-DOE-SE-1714097-121-Schroer, OSAH-DOE-SE-1715747-121-Schroer (Jan. 27, 2017)).

8. Petitioner G.W. ceased attending school in the District on or about January 12, 2017. He currently resides and attends school in DeKalb County. (Resp. and Mot. to Dismiss as Insufficient at 4; Due Process Hearing Req. filed Sept. 19, 2017).

9. Petitioners filed a third due process hearing request on February 21, 2017 (hereinafter "Complaint 3"), alleging that the District failed to maintain and/or produce records upon request, explain records pertaining to G.W., revise the IEP, record accurate grades or provide work

samples, assess G.W. appropriately, and "ensure [the] same resources [were] available to [G.W.] while [he was] enrolled in a charter school." Petitioners further alleged that the District falsely reported to state agencies and impeded parental rights. Petitioners provided no details regarding any of the claims listed in Complaint 3. (Due Process Hearing Req. filed Feb. 21, 2017). Accordingly, following review of the District's notice of insufficiency, the Court dismissed Complaint 3 in its entirety, without prejudice, on March 10, 2017. (Order on Sufficiency of Due Process Complaint and Order of Dismissal without Prejudice, Docket No. OSAH-DOE-SE-1726096-121-Schroer (March 10, 2017)).

10. Petitioners filed a formal complaint with the Georgia Department of Education ("DoE") on February 22, 2017, citing therein the District's purported failure to abide by the Resolution Agreement. (Formal Complaint filed Feb. 22, 2017).

11. The DoE conducted a review of Petitioners' complaint and issued a twelve-page decision on or about April 20, 2017. Based on its review, the DoE concluded that the District was in compliance with the Resolution Agreement. The DoE's decision further provided: "In accordance with standard complaint procedures, this complaint is now closed. All decisions arising from the complaint process are final. There is no appeal or reconsideration process." ([W.] v. Richmond County School District Formal Complaint Resolution dated Apr. 20, 2017).

12. Petitioners filed the instant due process hearing request (hereinafter "Complaint 4") on or about September 19, 2017. Petitioners' primary point of contention, as expressed in Complaint 4, is the District's alleged failure to abide by the terms of the Resolution Agreement. Petitioners ask that the District "remove all information that was agreed upon from all student records," "amend [G.W.'s] IEP as stated in the resolution agreement," and "pay for the remainder of services agreed upon through Varsity Tutors as written in the resolution agreement." Petitioners

also seek punitive damages. (Due Process Hearing Req. filed Sept. 19, 2017).

13. Also in Complaint 4, Petitioners ask that the District "pay for additional weeks of [extended school year services]" due to the District's alleged failure to transmit G.W.'s records to DeKalb County in a timely manner. Specifically, Petitioners claim:

> In the original agreement ESY was not included/calculated based upon the theory that. . . the current district [DeKalb] would evaluate and determine eligibility for the year. However due to the district['s] unwillingness to complete the terms of the resolution agreement and the extensive delay of the transfer of the student['s] special education records requested by the current district [DeKalb] the student was denied ESY due to insufficient records supporting the need of.[sic] The records were not received by the current district until mid[-]April[,] well after the current district determination period for ESY.

(Due Process Hearing Req. filed Sept. 19, 2017).

II. ANALYSIS

1. This case is governed by the IDEA, 20 U.S.C. § 1400, et seq.; its implementing federal regulations, 34 C.F.R. § 300.01, et seq.; and the Rules of the Georgia Department of Education, Ga. Comp. R. & Regs. 160-4-7-.01, et seq.

2. Under OSAH Rule 22, the Undersigned has the authority to "rule on motions . . . , including but not limited to motions to dismiss for lack of jurisdiction or for summary determination." Ga. Comp. R. & Regs. 160-4-7-.22(i).

A. This Court lacks jurisdiction to enforce the Resolution Agreement.

3. The IDEA requires participating states to adhere to express procedural requirements in order to "ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education . . . ." 20 U.S.C. § 1415(a). These requirements include an impartial due process hearing. Id. § 1415(f)(1)(B). Prior to the initiation of the due process hearing, the local education agency and the parent must convene a resolution meeting, unless the parties agree in writing to waive the meeting or to use

the mediation process. Id.; 34 C.F.R. § 300.510(a). The purpose of the meeting is to allow the parent and the local education agency to discuss the due process hearing request and the underlying facts so that the local education agency has an opportunity to resolve the dispute. 20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2).

4. If the parties reach a resolution of the dispute, they must execute a written settlement agreement. 20 U.S.C. § 1415(f)(1)(B)(iii). Per the IDEA, the written settlement agreement is "enforceable in any State court of competent jurisdiction or in a district court of the United States." Id. § 1415(f)(1)(B)(iii)(II). The IDEA's implementing regulations clarify that the agreement is enforceable in (1) any State court of competent jurisdiction, (2) a district court of the United States, or (3) by the state educational agency, if the State has other mechanism or procedures that permit parties to seek enforcement of resolution agreements. 34 C.F.R. § 300.510(d)(2); see also 34 C.F.R. § 300.537.

5. Georgia has established two distinct avenues for the resolution of disputes arising under the IDEA: the impartial due process hearing, such as the instant proceeding, and the "State Complaint Process," wherein the parent may file a written complaint with Georgia Department of Education ("DoE"). In Georgia, the State Complaint Process, not the impartial due process hearing, is the "other mechanism[] or procedure[] for enforcement of resolution agreements." Ga. Comp. R. & Regs. 160-4-7-.12(h)1. ("The agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States, *or through the State Complaint Process*.") (emphasis added).

6. The claims expressed in Complaint 4 almost exclusively concern the District's alleged failure to abide by the Resolution Agreement. Pursuant to state regulations implementing IDEA's procedural safeguards, Petitioners are limited to seeking redress for these claims through

a state court of competent jurisdiction, a federal district court, or, as Petitioners chose in this case, the state complaint process.[1] Ga. Comp. R. & Regs. 160-4-7-.12(h); see also 20 U.S.C. § 1415(f)(1)(B)(iii)(II); 34 C.F.R. § 300.510(d)(2). In other words, this Court lacks jurisdiction to enforce the Resolution Agreement. Id.; see J.K. v. Council Rock Sch. Dist., 833 F. Supp. 2d 436, 448 (E.D. Pa. 2011) ("[A] hearing officer lacks jurisdiction to enforce a settlement agreement.") (citing H.C. v. Colton-Pierrepont Cent. Sch. Dist., 341 Fed. Appx., 687, 690 (2009) ("a due process hearing before an [impartial hearing officer] was not the proper vehicle to enforce the settlement agreement")); see also W. Chester Area Sch. Dist. v. A.M., 164 A.3d 620, 630–31 (Pa. Commw. Ct. 2017) ("Where a special statutory review procedure exists, 'it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those cases to which it applies.'") (quoting J.K, 833 F. Supp. 2d at 448).

B. Petitioners' claim that Respondent violated IDEA by failing to transmit records in a timely manner was not sufficiently pled.

7. Finally, Petitioners' claim regarding the District's alleged failure to make timely provision of G.W.'s records to his new school is closely entwined with those regarding the Resolution Agreement. However, even if this claim can be considered independent from those pertaining to the Resolution Agreement, Petitioners have not pled sufficient facts to prove an actionable violation under IDEA. As set forth above, Complaint 4 was filed after Petitioners left Richmond County for DeKalb County. Further, the District's alleged IDEA violation—specifically, the failure to provide G.W.'s records in a timely manner—occurred after Petitioners left the District and G.W. began attending school in DeKalb County.

[1] The Court has misgivings about the DoE reviewer's statements that "[a]ll decisions arising from the complaint process are final" and that "[t]here is no appeal or reconsideration process." Under federal regulations, special statutory review procedures cannot "delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States." 34 C.F.R. § 300.537. However, this Court is without jurisdiction to hear challenges to the sufficiency of the State Complaint Process.

8. Assuming *arguendo* that a student or parent has a right under IDEA to file a due process hearing request against a former school district after having left that district, the Court concludes that Petitioners have not sufficiently alleged facts in Complaint 4 to support their claim regarding Respondent's alleged failure to timely transmit G.W.'s records. That is, IDEA provides only that a "previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency." 34 C.F.R. § 300.323(g); 20 U.S.C. § 1414. Complaint 4 does not include any information regarding if and when the DeKalb County School District made a request to Respondent to obtain Petitioner G.W.'s records. Accordingly, the Court concludes that Petitioners failed to plead sufficient facts to support their claim that Respondent failed to fulfill its obligation to "take reasonable steps to promptly respond" to a request from G.W.'s new school for records.

III. ORDER

Accordingly, the Court concludes that Complaint 4 should be, and hereby is, **DISMISSED WITH PREJUDICE,** with the exception of Petitioners' claim that Respondent violated IDEA by failing to timely respond to a request for G.W.'s records from DeKalb County School District, which is **DISMISSED WITHOUT PREJUDICE**. Further, Petitioners have failed to demonstrate that they are entitled to judgment as a matter of law and their motion for summary determination is hereby **DENIED**.

SO ORDERED, this 3rd day of November, 2017.

Kimberly W. Schroer
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(e)(3). 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; Fax: 404-818-3724; 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.