IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], BY AND THROUGH [redacted],	:	
Petitioners,	:	**Docket No.: [redacted]**
v.	:	**[redacted]-OSAH-DOE-SE-75-Walker**
HENRY COUNTY SCHOOL DISTRICT,	:	
Respondent.	:	

ORDER GRANTING RESPONDENT'S MOTION FOR INVOLUNTARY DISMISSAL

I. INTRODUCTION

Petitioner [redacted] filed a due process hearing request to contest the educational placement proposed for [redacted] by Respondent (also the "District") under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). After two continuances, the due process hearing took place on July 13, 2022.[1] As set forth in the Notice of Filing and Order issued on March 28, 2022 and the Pre-Hearing Order issued on April 19, 2022, Petitioners had the burden of proof in this matter and were required to exchange and file witness lists, exhibit lists, and exhibits at least five business days before the hearing. Petitioners did not do so, and Petitioner [redacted] confirmed that the only evidence Petitioners intended to present was [redacted]'s testimony. After Petitioner [redacted] testified under oath and subject to cross examination at the hearing on July 13, 2022, Petitioners

[1] The hearing was scheduled to take place in person at the Office of State Administrative Hearings in Atlanta, Georgia on July 13, 2022. On June 1, 2022, the Court granted Respondent's motion to allow unavailable witnesses to appear remotely. At 9:00 p m. on July 12, 2022, the night before the hearing, Petitioner sent an email message to the Calendar Clerk, requesting that she be permitted to participate in the hearing remotely due to a family medical emergency that required her to drive to Virginia in the evening of July 12, 2022. Respondent did not object to Petitioner's request, and Petitioner [redacted] participated in the hearing by telephone. Petitioner confirmed that she did not want to continue the hearing yet again because she wanted the matter resolved before the start of the new school year.

rested. Respondent then moved for involuntary dismissal. For the reasons set forth below and on the record of this case, the undersigned **GRANTED** the Respondent's motion for involuntary dismissal.

II. INVOLUNTARY DISMISSAL

As the party seeking relief, Petitioners have the burden of proof in this matter. Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 57-58, 62 (2005); accord Devine v. Indian River Sch. Bd., 249 F.3d 1289, 1291 (11th Cir. 2001); Ga. Comp. R. & Regs. 160-4-7-.12(3)(k)(l). Moreover, after a party with the burden of proof has completed the presentation of 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. Ga. Comp. R. & Regs. 616-1-2-.35. The Georgia Civil Practices Act ("CPA") also provides for involuntary dismissal. See O.C.G.A. § 9-11-41(b). Under the case law interpreting Section 41(b) of the CPA, a court presiding in a non-jury trial is not required to construe the evidence most favorably to the Plaintiff. Alexander v. Watson, 271 Ga. App. 816, 817 (2005) (trial court is not required to construe the evidence in the plaintiff's favor because trial court acting as factfinder); see also Ivey v. Ivey, 266 Ga. 143, 144 (1996) ("Since the [trial] court determines the facts as well as the law, it necessarily follows that the motion may be sustained even though plaintiff may have established a prima facie case.") (citation omitted).

III. ANALYSIS

A. Summary of Petitioner's Case

[redacted] is six years old and moved with her mother, [redacted]., to Henry County, Georgia from Arizona in or around December 2021. [redacted] has been diagnosed with autism, a sensory processing disorder, and speech and language delays. In Arizona, [redacted] was determined to be a

child with a disability under IDEA and was receiving services under an Individualized Education Program ("IEP").

In December 2021, [redacted] enrolled [redacted] in the Henry County School District as a kindergartener. Her home school is [redacted] Elementary. According to Erin Sears, an educator at [redacted], the District's procedures were to observe a new student for a short time before convening an IEP meeting. Consequently, after the winter holidays, [redacted]'s IEP team met for the first time on or about January 26, 2022 to discuss placement and services for [redacted]. [redacted] participated in the meeting, along with several other District employees. According to [redacted]., the IEP meeting "went smoothly," and the team determined that [redacted]. should be placed in a self-contained, adaptive curriculum autism classroom. [redacted]. agreed with the autism classroom placement, the proposed accommodations, the goals and objectives developed by the team, and the description of [redacted].'s present levels of performance, her strengths, and her needs.

Because [redacted] does not have a self-contained autism classroom, the District offered an autism classroom located at Hickory Flat Elementary School. [redacted] requested a tour of the school, and the District agreed. First, [redacted] spoke with the teacher in the Hickory Flat autism classroom, who told [redacted] that all the students in that class were diagnosed with autism, were not potty-trained, and most had behavior issues. In addition, the Hickory Flat teacher expressed concern that the classroom was understaffed, with herself and a para-professional responsible for approximately nine students. However, the teacher also said that they were in the process of hiring a new assistant.

[redacted] went on a tour of Hickory Flat, during which time she observed the autism classroom for about twenty minutes. She was appalled by what she observed, including what she described as safety concerns and a lack of meaningful instruction. She asked the District if there was an

autism classroom at another school that she could observe, and [redacted] testified that she initially understood that there was an autism classroom available at Woodland Elementary. Several weeks later, however, the District told [redacted]. that Woodland Elementary was not an option for [redacted] and that all other elementary autism classrooms were full. The only option open to [redacted] was the autism class at Hickory Flat, which [redacted] found unacceptable based on her short visit and information she received from other parents in Henry County. She filed a due process request on or about March 25, 2022, asking that [redacted] "be transferred to a school with an Autism class that is safe, well staffed and condusive [sic[to learning."

B. Conclusions of Law

As an initial matter, "educational placement" under IDEA is a "term of art" and refers to "the environment in which educational services are provided," not the physical location to which the student is assigned. See A.W. v. Fairfax Cty. Sch. Bd., 372 F.3d 674, 682 (4th Cir. 2004); White v. Ascension Par. Sch. Bd., 3473 F.3d 373, 379 (5th Cir. 2003) (educational placement means educational program, not the particular institution where that program is implemented); Hill by & Through Hill v. Sch. Bd., 954 F. Supp. 251, 253 (M.D. Fla 1977) aff'd, 137 F.3d 1355 (11th Cir. 1998). Petitioner [redacted] does not object to any of the components of the IEP adopted by [redacted]'s IEP team, and, as she confirmed during the hearing, she does not object to the physical location of Hickory Flats Elementary. Rather, her objection to [redacted]'s assignment to Hickory Flats is the environment she observed in the self-contained autism classroom during her twenty-minute visit.

Although the Court understands [redacted]'s misgivings regarding the Hickory Flats autism classroom, the evidence she presented at the due process hearing was insufficient to prove that the District's proposed placement is inappropriate or would deny [redacted] a free and appropriate

public education ("FAPE"). First, the evidence was insufficient to prove that the staffing ratios in the Hickory Flats autism classroom are inadequate for the projected class size or the needs of the students assigned to that class. In fact, Petitioners presented no probative evidence on the staffing levels or the needs of the other students assigned to the autism classroom for the 2022-2023 school year. Moreover, Petitioner [redacted]'s limited observation on one day was not sufficient to prove that the teacher and assigned staff would not routinely offer a safe learning environment or appropriate instruction and supervision as required by [redacted]'s IEP. See A.H. v. Smith, 367 F. Supp. 3d 387 419-20 (D. Md. 2019). In A.H. v. Smith, parents of a student with autism alleged, among other things, that the district's proposed placement lacked the capacity to implement the student's IEP based on the parents' pre-placement observations of the classroom. Id.

> Like their challenge to the adequacy of ABA programming at the proposed placements, Plaintiffs' challenge to the staffing and instructional methods at the placements is based on their observations of how classrooms functioned during their visits — without A.H.'s enrollment or the school's opportunity to comply with his IEPs. Plaintiffs have not demonstrated that the proposed placements lack the capacity to implement the IEPs if A.H. enrolled. . . . Therefore, the Court rejects Plaintiffs' argument that A.H. was denied a FAPE because the proposed placements do not have adequate staffing and instructional methods.

Id. See also J.W. v. New York City Dep't of Educ., 95 F. Supp. 3d 592, 606 (S.D.N.Y. 2015) (parent's objection to proposed placement, based on one visit to the school and a statement by a woman there, was speculative).[2]

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2 See F.L. ex rel. F.L. v. N.Y. City Dep't of Educ., 2012 U.S. Dist. LEXIS 149296, 2012 WL 4891748, at *14, aff'd 2014 U.S. App. LEXIS 296 (2d. Cir. 2014) (upholding the SRO's determination that a placement was not inadequate where "[t]he only support plaintiffs offer[ed] to demonstrate [the alleged inadequacy] [was] testimony from [the child]'s mother based on her single hour-and-a-half visit to [the school]"); cf. N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 566, 592 (S.D.N.Y. 2013) (holding that "[t]he fact that Plaintiffs did not observe any sensory equipment on their site visit is insufficient to demonstrate that [the school] lacked such equipment or that the school would not obtain the equipment necessary to implement [the child's] IEP should [the child] attend the school."); M.O. v. N.Y. City Dep't of Educ., 793 F.3d 236, 244 (2nd Cir. 2015) ("speculation that the school district will not adequately adhere to the IEP is not an appropriate basis for unilateral placement' because the provision of a FAPE must be evaluated 'prospectively'"), quoting R.E. v. New York City Dep't of Educ., 694 F.3d 167, 195 (2nd Cir. 2012).

Of course, the District is obligated under IDEA to provide the services, supports, and accommodations necessary to provide [redacted] FAPE and to faithfully implement her IEP in a safe learning environment according to her IEP. Petitioners simply did not present sufficient probative evidence to prove that District will not meet these obligations.

IV. CONCLUSION

Based on the foregoing, the District's Motion for Involuntary Dismissal is **GRANTED,** and this matter is **DISMISSED.**

SO ORDERED, this 25th day of July, 2022.

Kimberly W. Schroer
Administrative Law Judge