



01/30/2024

Devin Hamilton, Legal Assistant

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[Redacted], by and through [Redacted]; and [Redacted],
Petitioners,

Docket No. [Redacted]
[Redacted] OSAH-DOE-SE-60-Kennedy

v.

FULTON COUNTY SCHOOL DISTRICT,
Respondent.

FINAL DECISION
ORDER OF DISMISSAL WITH PREJUDICE

The Respondent filed a Motion to Dismiss Petitioner’s Due Process Hearing Request with Prejudice Due to Settlement of Case and Brief in Support Thereof on January 19, 2024. Petitioners filed their response on January 29, 2024. Ga. Comp. R. & Regs. 616-1-2-.16. After careful consideration, the Court hereby GRANTS the Respondent’s Motion to Dismiss with Prejudice.

On December 14, 2023, Petitioners filed four (4) Special Education Due Process Hearing Request Forms with the Georgia Department of Education, which were then referred to the Office of State Administrative Hearings (OSAH) on December 15, 2023. On December 19, OSAH issued a Notice of Filing and Order. Thereafter, on December 19, OSAH issued a Notice of Hearing for February 8-9, 2024.

As noted above, on January 19, 2024, the Respondent filed a Motion to Dismiss with Prejudice. In its Motion, the Respondent asserts that the “Parties previously reached an enforceable agreement on November 29, 2023 that fully resolves all matters at issue in the underlying Due Process Hearing Request.”

The Petitioners had previously filed a Special Education Due Process Hearing Request Form on November 13, 2023, which was assigned to Judge Steven Teate and was assigned docket number 2416352. A Settlement Agreement was signed by the Petitioners on November 28, 2023, and signed by

the Respondent on November 29, 2023. Upon being notified of the settlement, Judge Teate dismissed Docket Number 2416352 with prejudice.

Two weeks later, on December 14, 2023, the Petitioners filed four (4) Special Education Due Process Hearing Request Forms (DPHR). The fourth one is identical in the description of the nature of the problem and proposed resolution as the DPHR filed on November 13, 2023. The other three (3) address concerns regarding there being no record of the impact of interrupted services as it relates to school closings that appear to predate the November 2023 DPHR; concerns regarding the 2023 Individualized Education Plan and Evaluation records being incomplete and/or containing inaccuracies, that forms sent home were not explained and were not identified as being forms that would be used in his evaluation, and that the meeting minutes fail to accurately reflect parent concerns and input; and finally concerns regarding the Least Restrictive Environment and his current placement limiting his ability to interact with nondisabled peers.

The Settlement Agreement entered into by the parties in November 2023 contains a provision that states:

The Family hereby waives all claims against the School District and School District members and agrees to indemnify, hold harmless, and release the District and all District members of any from any and all claims, demands, actions, liabilities, or damages whether known or now unknown arising out of or relating in any way whatsoever to the Family's claims related to the Student's education or educational involvement with the District which were raised or could have been raised in the Parents' Due Process Hearing Request. This waiver and release includes, but is not limited to, claims arising under any and all federal, state, and local constitutions, statutes [sic], ordinances, and regulations.

The Settlement Agreement further provides that it "does not impact either Party's ability to bring any future claim for future violations."

A review of the four (4) DPHR forms filed on December 13, 2023, shows that the issues raised are ones that are barred based on the Settlement Agreement reached in the prior case and Judge Teate's

Order of Dismissal with Prejudice in the previous matter. The four DPHR forms do not raise issues regarding violations that are claimed to have occurred after November 29, 2023, and/or that are not tied to actions that took place prior to November 29, 2023, when the settlement agreement was executed.

Petitioners' response filed on January 29, 2024, raises issues regarding actions taken after November 29, 2023. In Petitioners' response they assert four concerns: (1) [REDACTED]'s IEP requires the use of a device but the device has not been used in the past six weeks; (2) the speech pathologist working with [REDACTED] over the past few weeks is not trained to work with children with Apraxia and has not been trained on how to use the device to assist him; (3) although Respondent agreed to an IEE and was provided the name of a psychologist on November 28, 2023, Respondent has yet to proceed with the IEE; and (4) the Respondent has said [REDACTED] cannot learn to read in his current program but have offered no alternative program nor made any effort to amend his IEP to ensure educational benefit in the area of reading. However, DPHR hearings are limited to the issues raised in the DPHR itself. Thus, this Court's review would be limited to the issues raised in the four (4) DPHR forms filed on December 13, 2023, which only raise issues that are barred based on the prior Settlement Agreement and dismissal of the prior action. 20 U.S.C. § 1415(f)(3)(B) (party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [due process hearing request] notice); see also 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(3)(j).

Based on the foregoing, this matter is **DISMISSED WITH PREJUDICE**. Accordingly, the hearing scheduled for February 8-9, 2024, is hereby cancelled.

SO ORDERED, this 30th day of January, 2024.



Ana Kennedy
Administrative Law Judge

