

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

██████████, and ██████████
by and through EDUCATION SYSTEM
MANAGEMENT, INC,
Petitioners,


v.

CLAYTON COUNTY SCHOOL
DISTRICT,
Respondent.



Docket Nos.:

1730207-OSAH-DOE-SE-31-Howells
1730209-OSAH-DOE-SE-31-Howells
1730210-OSAH-DOE-SE-31-Howells
1730216-OSAH-DOE-SE-31-Howells
1730217-OSAH-DOE-SE-31-Howells
1730218-OSAH-DOE-SE-31-Howells
1730220-OSAH-DOE-SE-31-Howells


Kevin Westray, Legal Assistant

FINAL DECISION
AND ORDER GRANTING SUMMARY DETERMINATION

On March 31, 2017, Education Systems Management, Inc. d/b/a National Youth Placement Corp. (“ESM”) filed a Due Process Hearing Request (“Complaint”) on behalf of seven children placed in its residential treatment facilities.¹ The Complaint acknowledges that the Department of Human Services, Division of Family and Children Services (DHS/DFCS) is the legal custodian and guardian of these children. (Complaint ¶¶ 6, 8.) On April 13, 2017, Respondent Clayton County School District (the “District”) filed a Motion for Summary Determination asserting, *inter alia*, ESM lacks standing to file a due process complaint under the Individuals with Disabilities Education Improvement Act (“IDEA”).² On April 25, 2017, Petitioners filed an Emergency Request for Immediate Provision of Education. On May 1, 2017, the District filed its Second Motion for Summary Determination. Throughout these proceedings the parties have been engaged in settlement negotiations. On May 30, 2017, the undersigned granted the parties’ joint request for a continuance to pursue settlement negotiations. On June 1,

¹ The matters were docketed separately for each child and subsequently consolidated for purpose of hearing.

² In addition to its standing argument, the District argued that this tribunal does not have jurisdiction over claims under the Americans with Disabilities Act (“ADA”) or Section 504 of the Rehabilitation Act (“Section 504”). Petitioners subsequently withdrew their Section 504 and ADA claims. (See Petitioners’ Response and Objection to Respondent’s Motion for Summary Determination, p. 7.)

2017, the undersigned granted another continuance to allow the parties to pursue settlement negotiations. The hearing is currently set for July 17, 19, 21, 24, 25, 2017.³ For the reasons that follow, the District's Motion for Summary Determination is **GRANTED**.

Findings of Fact

1.

ESM is a residential treatment facility for adolescents with mental health and substance abuse problems. (Complaint, ¶ 1; Braddy Aff., ¶ 2.)

2.

██████████, and █████ are in the State of Georgia foster care system. DHS/DFCS is the legal custodian and guardian of these children. (Complaint, ¶¶ 6, 8; Braddy Aff., ¶ 5.) The children have been placed by the state at one of two residential facilities owned by ESM. (Braddy Aff., ¶¶ 3, 5.)

3.

DHS/DFCS has entered into Institutional Placement Agreements with ESM to provide care for each of the children. Pursuant to a form entitled "Consent for Treatment, Release of Information and Granting of Authority for Required Services," DHS/DFCS granted ESM "full authorization . . . to enroll, advocate, request for any and all educational evaluations to include but not limited to requesting IEP or other evaluations, active participation and decision making authority relative to the youth[']s general and/or special education services . . . while the youth is in the residential treatment facility." (Braddy Aff., ¶ 10 and Exhibit A, attached thereto.)

³ On June 2, 2017, ESM on behalf of Petitioners █████ and █████ voluntarily dismissed their claims as they had reached the age of majority.

Standard for Summary Determination

Summary determination in this proceeding is governed by Office of State Administrative Hearings (“OSAH”) Rule 15, which provides, in relevant part: “A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.” Ga. Comp. R. & Regs. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party “is entitled to a judgment as a matter of law on the facts established.” *Pirkle v. Envtl. Prot. Div., Dep’t of Natural Res.*, No. OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (Oct. 21, 2004) (citing *Porter v. Felker*, 261 Ga. 421 (1991)); see also *Piedmont Healthcare, Inc. v. Ga. Dep’t of Human Res.*, 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is “similar to a summary judgment” and elaborating that an administrative law judge “is not required to hold a hearing” on issues properly resolved by summary determination).

Conclusions of Law

1.

The IDEA⁴ allows parents or local educational agencies (LEAs) to file due process hearing requests regarding the identification, evaluation or educational placement of a child with a disability, or the provision of a Free Appropriate Public Education (“FAPE”) to the child. *See* 20 U.S.C. § 1415(f)(1)(A) (noting that parents and local educational agencies are the parties involved in due process hearings); 34 C.F.R. § 300.507 (“A parent or a public agency may file a

⁴ 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 as the Individuals with Disabilities Education Act (i.e., IDEA).

due process complaint”);⁵ Ga. Comp. R. & Regs. 160-4-7-.12(3) (“The impartial due process hearing is designed to provide a parent or LEA an avenue for resolving differences with regard to the identification, evaluation, placement [of] or provision of a (FAPE) to a child with a disability.”); *see also Winkelman ex. rel. Winkleman v. Parma City Sch. Dist.*, 550 U.S. 516, 530-31 (2007) (noting that IDEA “empowers parents to bring challenges”); *see Woods Servs. Inc. v. Hazleton Area Sch. Dist.*, No. 3:15-CV-02464, 2016 U.S. Dist. LEXIS 147769, at *12-13 (M.D. Pa. Oct. 25, 2016) (holding that a non-profit corporation did not have a private right of action under IDEA and did not have standing to sue under the statute).

2.

Under IDEA and its implementing regulations, “parent” is defined as follows:

The term “parent” means –

- (A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- (B) a guardian (but not the State if the child is a ward of the State);⁶
- (C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (D) except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent.

20 U.S.C. § 1401(23); *see* 34 C.F.R. § 300.30(a); *see also* Ga. Comp. R. & Regs. 160-4-7-.21(31)(a). Here, there is no dispute that these children are in the custody of DHS/DFCS and

⁵ The federal regulations define “public agency” to include the SEA, LEAs, ESAs, non-profit public charter schools, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33

⁶ Both the federal regulation and the Georgia Department of Education (“DOE”) Rules define “ward of the state,” as a child who is a foster child, a ward of the State, or in the custody of a public child welfare agency (e.g., DHS/DFCS). *See* 20 U.S.C. § 1401(36); *see also* Ga. Comp. R. & Regs. 160-4-7-.21(44).

therefore are wards of the State. Because the children are wards of the State, the State does not meet the definition of parent under IDEA and its implementing regulations and, therefore, does not have standing to file a due process complaint. 20 U.S.C. § 1401(23)(b); 34 C.F.R. § 300.30(a)(3).

3.

ESM argues that it has standing to file the due process complaint on behalf of these children because DHS/DFCS has authorized it to make educational decisions on their behalf. Specifically, ESM argues that DHS/DFCS has assigned guardian rights to ESM.⁷ For the following reasons, ESM's argument is without merit.

4.

First, under Georgia law guardianship rights cannot be transferred absent a court order. See O.C.G.A. §§ 15-11-11, -13, -14; see also O.C.G.A. §§ 15-11-240, -244. Second, DHS/DFCS does not have standing to file a due process complaint. Thus, it cannot assign rights (i.e., standing) that it does not have.⁸ Accordingly, ESM does not meet the definition of a parent and therefore cannot file a due process complaint as a parent.

⁷ ESM cites *Family & Children's Ctr. v. School City*, 13 F.3d 1052, 1056-60 (7th Cir. 1994) for the proposition that it has standing to file the due process complaint on behalf of these children. ESM's reliance on *Family & Children's Ctr.* is misplaced. The holding in that case was based upon Indiana's regulation regarding the internal complaint investigation process, not due process hearings. Compare 511 IAC 7-45-1(a) ("Any individual, group of individuals, agency, or organization may file a complaint alleging violations of federal or state laws that apply to special education programs."), with 511 IAC 7-45-3(a) ("A parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer."). Georgia has a similar regulatory scheme. Compare Ga. Comp. R. & Regs. 160-4-7-.12(1) (An organization or individual, including an organization or individual from another state, may file a signed, written complaint regarding allegations of substance . . . [including] a statement that the LEA has violated requirements of the IDEA . . ."), with Ga. Comp. R. & Regs. 160-4-7-.12(3) ("The impartial due process hearing is designed to provide a parent or LEA an avenue for resolving differences with regard to the identification, evaluation, placement [of] or provision of a (FAPE) to a child with a disability").

⁸ Furthermore, there is a process for appointing a surrogate parent when the child is a ward of the state. The responsibility and duty to appoint a surrogate parent lies with the LEA or alternatively with the judge overseeing the child's dependency case, not DFCS. See 34 C.F.R. § 300.519(b), (c); see also Ga. Comp. R. & Regs. 160-4-7-.13(1)-(3).

5.

IDEA defines LEA as follows:

[A] public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.


20 U.S.C. § 1401(19)(A); *see also* Ga. Comp. R. & Regs. 160-4-7-.21(28). ESM does not meet the definition of an LEA and, therefore, cannot file a due process complaint as an LEA.

Decision

For the foregoing reasons, ESM lacks the standing to file a due process complaint on behalf of the Petitioners. Accordingly, the District's Motion for Summary Determination is **GRANTED** and Petitioners' Complaint is **DISMISSED**.

All other pending motions are **DENIED** as moot.

SO ORDERED, this 21st day of June, 2017.



STEPHANIE M. HOWELLS
Administrative Law Judge