

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

█████, by and through █████, parent,)	
Petitioners,)	
)	
)	Docket No.: 1931966
v.)	1931966-OSAH-DOE-SE-39-Teate
)	
)	
CRAWFORD COUNTY SCHOOL)	
DISTRICT,)	
Respondent.)	

FINAL DECISION

I. Introduction

Petitioner █████, through her mother, █████, requested a due process hearing on March 22, 2019. Inasmuch as the parties failed to reach settlement at a resolution meeting, a hearing was held on May 7-8, 2019 at the Crawford County Courthouse in Knoxville, Georgia. █████ represented Petitioner. Reagan Sauls, Esq., represented Crawford County School District (“the District”). At the conclusion of Petitioner’s presentation of her case in chief, the District made an oral Motion for Involuntary Dismissal on the grounds that the Petitioner had shown no right to relief given the facts and law presented. For the reasons indicated below, the Motion for Involuntary Dismissal of Petitioner’s claims was orally **GRANTED** on May 8, 2019, and is here memorialized.

II. Findings of Fact

1. Petitioner is a six-year-old kindergarten student who attends Crawford County Elementary School. Based on an evaluation and a special education eligibility report completed by the District, Petitioner is at grade level in all areas of academic achievement. Further, she is

approximately one year above grade level in Math problem solving and numerical operations. Petitioner has no reported medical diagnosis or issue of which the District is aware. Nonetheless, Petitioner exhibits behaviors that significantly interfere with her education and the education of others including bullying others; annoying other students on purpose; refusing to comply with directions given by a teacher; threatening to hurt other students; losing her temper; climbing on tables; tearing up other students' work; throwing property of the school and others; ripping things off the wall; and otherwise destroying property. (Respondent Exhibits 14, 15, and 16; Testimony of [REDACTED] Testimony of Ms. Catherine Brown).

2. During the 2017-2018 school year, Petitioner attended the District's pre-school program until the District requested an evaluation. At that time, Petitioner's mother refused to consent to the proposed evaluation and withdrew her from the program. Once Petitioner entered kindergarten in the 2018-2019 school year, Petitioner was placed in the Response to Intervention ("RTI") system in order to determine if certain strategies would help with Petitioner's behavior. (Respondent Exhibits 8 and 9). The interventions implemented by the District included removal from class to another classroom for decompression; cool down time and space; check in/check out; positive reinforcement; use of daily behavior charts broken down into each segment of the day to help Petitioner with self-monitoring; and a token system. Inasmuch as these interventions failed to curb Petitioner's severe behaviors, the District again asked for permission to evaluate her. Petitioner's mother signed a form consenting to the District's evaluation in January 2019. (Respondent Exhibit 13; Testimony of [REDACTED] Testimony of Ms. Brown).

3. After the District completed its evaluation, an evaluation meeting was held on March 5, 2019. (Respondent Exhibit 15). Petitioner's mother was invited to the meeting, but she did not attend. At the request of Petitioner's mother, Petitioner's aunt was given permission

to attend the meeting and signed a form indicating consent for services on behalf of Petitioner's mother. *Id.* Petitioner was found eligible for IDEA services under the eligibility category of Emotional and Behavioral Disorder ("EBD"). An Individual Education Plan ("IEP") was developed on March 12, 2019. (Respondent Exhibit 16). During that meeting, the IEP team determined that, due to Petitioner's extreme behaviors, more data needed to be collected in order to develop an appropriate behavior intervention plan ("BIP") for Petitioner. (*Id.*; Testimony of [REDACTED]; Testimony of Ms. Brown).

4. The IEP team determined that specific behavior data would be taken for four weeks. During this time, the District provided additional support to Petitioner to allow her to stay in school for an entire day. Based on the data collection period, the IEP team scheduled the next meeting on April 16, 2019 to review the data and develop a BIP. (Respondent Exhibit 16). Rather than giving notice to the IEP team that she did not agree with the decision, Petitioner's mother filed the current complaint on March 22, 2019. (Testimony of [REDACTED]; Testimony of Ms. Brown).

5. In her complaint, Petitioner's mother contends that the District's placement of Petitioner was improper; the evaluation of Petitioner was inadequate; and Petitioner was incorrectly diagnosed with an EBD under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415. Additionally, Petitioner claims that she was not provided with a free appropriate public education ("FAPE"). Although Petitioner's mother disagreed with the EBD eligibility determination and opined that Petitioner needed a neuropsychological evaluation, she provided no evidence to support her opinion or refute the eligibility team's findings at the IEP meeting.¹ Additionally, Petitioner presented no evidence that the evaluation was inadequate or that the

¹ As previously noted, Petitioner's mother did not attend the IEP team meeting, and Petitioner's aunt attended on her behalf.

District denied a request for an independent evaluation. Finally, although Petitioner's mother disagreed with placement, no evidence was presented in support of her position or to show that the placement violated Petitioner's rights. (OSAH Form 1; District's Response to Due Process Complaint; Testimony of [REDACTED]; Testimony of Ms. Brown).

III. Conclusions of Law

1. The Petitioner, as the party seeking relief, carries the burden of proof in this matter. Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 57-58, 62, 126 S.Ct. 528, 534-537 (2005); accord Devine v. Indian River Sch. Bd., 249 F.3d 1289, 1291 (11th Cir. 2001); Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(n). The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(u). 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 which has presented its evidence has failed to carry its burden. Ga. Comp. R. & Regs. 616-1-2-.35; see also O.C.G.A. § 9-11-41(b). However, unlike a motion for directed verdict, an involuntary dismissal does not require the trial court to construe the evidence most favorably for the non-moving plaintiff, and an involuntary dismissal may be warranted "even though plaintiff may have established a prima facie case." Smith v. Ga. Kaolin Co., 269 Ga. 475, 476 (1998). Thus, at bench trial, the trial court "can determine when essential facts have not been proved." Id.

2. The IDEA provides federal funding to assist state and local educational agencies in educating children with disabilities. See generally, 20 U.S.C. § 1400; Bd. of Educ. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982). The purpose of the IDEA and its implementing regulations is to ensure that all children with disabilities may receive a free appropriate public education ("FAPE"). See 34 C.F.R. § 300:1. The IDEA provides a right to file a due process

complaint to challenge issues related to FAPE. See 20 U.S.C. § 1415. In Georgia, this Court has jurisdiction over most "contested cases," as that term is defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," including IDEA cases. See O.C.G.A. § § 50-13-41, 50-13-42.

3. In order to ensure that parents are not litigating before fully explaining their concerns to the IEP Team, the Act requires that the Petitioner describe “the nature of the problem of the child relating to the proposed or refused change including facts relating to the problem” and “[a] proposed resolution to the problem to the extent known and available to the party at the time.” 34 C.F.R. §300.508(b)(5) and (6). The Complaint is not a mere guideline to be developed through discovery. To the contrary, under IDEA:

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under [34 C.F.R.] § 300.508(b), unless the other party agrees otherwise.

34 C.F.R. § 300.511(d), Subject matter of due process hearings. See also 20 U.S.C. § 1415 (f)(3)(B). Petitioners were limited at the due process hearing to issues raised in the Complaint.

Eligibility

4. Pursuant to IDEA, a student needs to exhibit only one of the five criteria under the definition of an Emotional Disturbance (“ED”) to potentially qualify for special education and related services under the ED classification, but the student must exhibit the criteria to "a marked degree" over "a long period of time.”² The relevant criteria are an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a

² Emotional and Behavioral Disorder (“EBD”) is the term used in the Rules and Regulations of Georgia to describe an Emotional Disturbance (“ED”) under IDEA. See 34 C.F.R. § 300.8(c)(4)(i); Ga. Comp. R. & Regs. 160-4-7-.05.

tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8(c)(4)(i); Ga. Comp. R. & Regs. 160-4-7-.05. Although Petitioner's mother disagreed with the eligibility category of EBD, Petitioner failed to provide any evidence to support this position or refute any of the evidence provided by the eligibility team. (See Respondent Exhibit 14).

Evaluation

5. Each district "must conduct a full and individual initial evaluation" before providing special education and related services to a child with a disability. 34 C.F.R. § 300.301(a). As required, the District completed a psychological evaluation prior to providing special education services. (Respondent Exhibit 14). Petitioner's mother testified that she believed Petitioner needed a neuropsychological evaluation, but this was not based on evidence or an expert opinion. IDEA's regulations provide that, "a parent has the right to an independent educational evaluation at public expense if the parent **disagrees with an evaluation** obtained by the public agency..." 34 C.F.R. § 300.502. However, no evidence was presented that Petitioners disagreed with the evaluation prior to her submission of her due process hearing request. Further, Petitioners did not submit any evidence that the District denied a request for an independent evaluation.

Placement

6. The IDEA provides that each public agency must ensure that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removals of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved

satisfactorily.” 34 CFR § 300.114 (a)(2). Petitioner’s mother’s disagreement with placement and contention that such placement violated Petitioner’s rights is unsupported by any evidence other than her uncorroborated opinion.³

FAPE

7. Every student with a disability eligible under the IDEA is entitled to a FAPE. The IDEA defines the entitlement of FAPE as special education and related services that “are provided at public expense, under public supervision and direction, and without charge; meet the standards of the SEA,⁴ including the requirements of this part; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program that meets the requirements of [34 C.F.R.] §§ 300.320 through 300.324.” 34 C.F.R. § 300.17. Petitioner, through her mother, did not submit any evidence to prove that the District failed to provide a FAPE to [REDACTED]

IV. Decision

For the reasons indicated, the District’s Motion for Involuntary Dismissal of Petitioner’s claims was orally **GRANTED** on May 8, 2019, and is here memorialized. Accordingly, Petitioner’s March 22, 2019 due process claim is **DISMISSED** with prejudice.
SO ORDERED, this 28th day of May, 2019.



Steven W. Teate
Administrative Law Judge



³ Further, Ms. Brown testified that the IEP team later changed Petitioner’s placement making the claim moot as Petitioner’s opposition to placement was based on her former, rather than current, placement. Courts of this state define a moot case as “one which seeks to determine an abstract question which does not arise upon *existing* facts or rights.” *Chastain v. Baker*, 255 Ga. 432, 433 (1986)(italics in original).

⁴ “SEA” is the State Education Agency.