

05-0512731

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

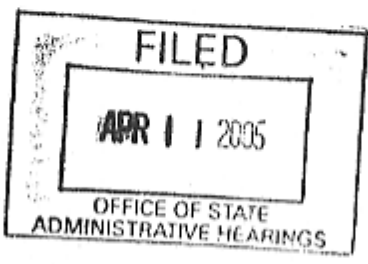
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Petitioner,

v.

GWINNETT COUNTY SCHOOL DISTRICT,
Respondent.

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: Docket No:
: OSAH-DOE-SE-0512731-67--Foster
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FINAL DECISION

I. Introduction

The Respondent moved for a summary determination in the above-styled case based on the record in this matter including the Petitioner's Request for Continuance, the argument and legal authority contained in the Brief in Support of Respondent's Motion for Summary Determination, the Material Facts as to Which There Is No Genuine Issue for Determination and the affidavits annexed to the Material Facts as to Which There Is No Genuine Issue for Determination. Subsequent to the filing of the Motion and the Petitioner's Motion in Opposition to Respondent's Motion for Summary Determination, a hearing was conducted on that issue to allow parties to present oral arguments.

For the reasons stated below, the Respondent's Motion for Summary Determination is GRANTED.

II. Undisputed Material Facts

1.

█, a minor child born on █, █, and the Petitioner herein, is a seventh grade student at █ Middle School ("the school") and lives within the Respondent's school district. (T. 23)

2.

The Petitioner is not a child with a disability and he has never has been found eligible for special education services under the Individuals with Disabilities Education Act (IDEA). (T. 23, 24)

3.

In early December 2004, Petitioner's father spoke on the telephone with John Shaw, Respondent's Director of Legal and Policy, Department of Special Education, and was informed by the Petitioner's father that he wanted to proceed with due process because an

eligibility meeting had not been scheduled in November 2004 when he requested it. (See Aff. of Shaw at Attachment A and T. 24, 25.)

4.

Mr. Shaw informed the Petitioner's father that he was unaware of a request for an eligibility meeting, but that a meeting should be scheduled immediately. The Petitioner's father declined and stated that he wanted to proceed with due process. (See Shaw's affidavit.)

5.

Neither Mr. Shaw's office nor the school has a record of a request for an eligibility meeting made in November 2004. (See Aff. of Hahn at Attachment B and Attachment A.)

6.

On December 6, 2004, Mr. Shaw sent a notice of eligibility meeting, via both regular and certified mail to Petitioner's parents, scheduling the meeting at the school for 9:30 a.m. on December 14, 2004. (See Attachments A and B.)

7.

Delivery of the certified mail was attempted twice by the post office, but it was never claimed. The regular mail envelope was not returned to Mr. Shaw. (See Attachment A.)

8.

On December 14, 2004, the eligibility team met at the school at 9:30 a.m. The meeting was cancelled when neither of the Petitioner's parents appeared. (See Attachments A and B.)

9.

On January 12, 2005, the school district received a packet of information from Petitioner's parents with documentation for the due process hearing. Included in the packet were two letters addressed to Ms. Hahn at the school, one letter, dated November 1, 2004, requested an eligibility meeting, and the other letter, dated December 3, 2004, requested copies of the Petitioner's student records. (See Attachment B.)

10.

On January 18, 2005, in response to the record request, Ms. Hahn sent a letter to Petitioner's parents indicating that the records would be available for retrieval on January 18, 2005. (See Attachment B.)

11.

Ms. Hahn was unaware of the request for an eligibility meeting or the request for records until January 13, 2005. (See Attachment B.)

12.

The school district remains willing to hold a meeting with the parents of Petitioner to discuss any concerns they may have regarding their child's education. (See Attachments A and B.)

13.

On January 12, 2005, the Petitioner filed a motion for a continuance in this matter which disclosed that a due process hearing had not been requested on the issue of his eligibility for services under the IDEA. Paragraph 7 of the said motion states the following:

We, parents of the Petitioner, never requested a Due Process Hearing to determine the eligibility of Petitioner.

(See Petitioner's Motion for Continuance.)

14.

The school does not have a current phone number where either parent may be reached to communicate with them on this matter. (See Attachment B.)

III. Conclusions of Law

1.

In a motion for summary determination, any party may move, based on supporting affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. OSAH Rule 15 (1)

2.

If all factual issues are decided by summary determination, no hearing will be held and the ALJ shall prepare an Initial or Final Decision under OSAH Rule 27.

3.

The Petitioner is not a child with a disability and, therefore, is not entitled to a due process hearing under IDEA. See 20 U.S.C. § 1415 (a).

4.

The Petitioner has failed to present any issues for consideration by the administrative judge and has, in its Motion for Continuance filed with this tribunal on January 12, 2005, specifically stated that the Petitioner's parents never requested a Due Process Hearing to determine the eligibility of the Petitioner.

5.

Inasmuch as the Petitioner has failed to show that he is a student with a disability, this tribunal lacks subject matter jurisdiction. See O.C.G.A. § 9-11-12(h) (3).

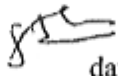
6.


The federal regulations implementing the IDEA limit the basis for requesting a due process hearing to the identification, evaluation or educational placement of a child or the provisions of free appropriate public education (FAPE) to the child and/or parental consent. See 34 CFR

Sec. 300.503; Sec. 300.507. Assuming *arguendo*, that the Petitioner has requested a hearing based on the alleged failure of the Respondent to provide the Petitioner's education records, which he has failed to do, there would be no provision for a hearing based on such an allegation.

IV. Order

For the reasons set forth, the Respondent's Motion for Summary Determination as to all issues is GRANTED.

SO ORDERED, this  day of April 2005.


CHRIS A. FOSTER
Administrative Law Judge