BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS STATE OF GEORGIA

FILED AUG 1 3 2008 OFFICE OF STATE ADMINISTRATIVE HEARINGS

ATLANTA PUBLIC SCHOOLS, Plaintiff,

Docket No.: OSAH-DOE-IEE-0828123-

60-Barnes

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Defendant.

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FINAL DECISION

LEGAL SERVICES

The Atlanta Public Schools ("Plaintiff" or "APS") filed a request for a due process hearing on May 5, 2008, under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 et seg. , subsequent to 🐠.'s ("Defendant") request for an independent educational evaluation at public expense. The parties conducted a resolution session on June 16, 2008, and met with a mediator on July 17, 2008, but were unable to reach a resolution of the dispute. In the interim, on June 16, 2008, Plaintiff filed a Motion for Summary Determination pursuant to OSAH Rule 616-1-2-.15. Defendant has not responded to the motion. This Court has reviewed Plaintiff's motion and hereby grants said motion as Plaintiff is entitled to judgment as a matter of law.

I. FINDINGS OF FACT

1.

On August 24, 2005, Defendant was found eligible to receive special education services based on information reviewed by an in-school team. The reviewed information included the results of a March 2005 psychological evaluation. Exhibit P-1. Affidavit of Genelle Holloway, Coordinator for the Program for Exceptional Children for APS.

A current individualized education program is in place, and no additional evaluation has been conducted since 2005. Pursuant to APS procedures, a tri-annual evaluation of Defendant is scheduled to be conducted by Plaintiff prior to Fall 2008. Exhibit P-1.

II. CONCLUSIONS OF LAW

1.

Pursuant to 34 C.F.R. § 300.502(b)(5), a student is entitled to an independent educational evaluation at public expense only when the public agency has conducted an evaluation with which the parent disagrees.

2.

To the extent Defendant disagrees with the evaluation conducted in 2005 and seeks an independent educational evaluation at public expense based on such disagreement, Defendant's request is untimely, as it was not made within a reasonable time after Plaintiff conducted its evaluation and is beyond the two-year statute of limitations. 34 C.F.R. § 300.507(a)(2).

3.

Furthermore, any request for an independent educational evaluation at the present time would be premature as Defendant is scheduled to have her regular triannual evaluation in the Fall of 2008. 34 C.F.R. § 300.303 (b)(2).

III. DECISION

Based on the above findings of fact and conclusions of law, this Court holds that Defendant is not entitled to an independent educational evaluation at public expense at

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this time. Any request based on the 2005 evaluation is barred by the statute of limitations and the scheduled Fall 2008 evaluation by Plaintiff has not yet been conducted. Accordingly, Plaintiff's motion for summary determination hereby is granted. If Plaintiff fails to conduct the tri-annual evaluation or if Defendant disagrees with the results of the evaluation, Defendant may request an independent educational evaluation at public expense and/or a due process hearing as appropriate.

SO ORDERED this 13th day of august, 2008.

LA RONDA D. BARNES, Judge

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