

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[Redacted]

Plaintiff,

v.

HENRY COUNTY SCHOOL DISTRICT,
Defendant.

:
: Docket No.:
: OSAH-DOE-SE-1100094-75-Baxter
:
:
:



ORDER OF DISMISSAL

Plaintiff filed a due process complaint pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA” or “Act”), 20 U.S.C. §§ 1400 to 1482, and its implementing regulations, 34 C.F.R. Part 300, against Defendant Henry County School District (“District”) alleging a denial of a free appropriate public education (“FAPE”). Plaintiff’s mother, [Redacted], represented him at the hearing. Attorney David Waldroup represented the School District.

Plaintiff’s sole evidence in this case was the testimony of [Redacted]. After the Plaintiff completed the presentation of her case, Defendant moved to dismiss the Complaint due to the Plaintiff’s failure to carry the burden of persuasion. For the reasons stated below, Plaintiff’s request for relief is **DENIED** and Defendant’s motion for involuntary dismissal is **GRANTED**.

FINDINGS OF FACT

Although the Plaintiff alleges in the Complaint that he was denied a free, appropriate, public education, [Redacted] admitted in her testimony and this Court finds that [Redacted] has passed all of his classes to date, [Redacted] currently maintains a cumulative “B” average in his classes, and [Redacted] is progressing from grade to grade. [Redacted] also admitted and this Court finds that the reason Plaintiff sought additional tutoring was because [Redacted]’s desires for [Redacted] to maximize his potential as a student. [Redacted] admitted and this Court finds that [Redacted] had multiple tutoring opportunities each week during the prior year, but [Redacted] only attended a single tutoring session during the prior school year. [Redacted] failed to introduce any evidence demonstrating the need for

additional tutoring in order to receive a free, appropriate, public education, and failed to point to any substantive reason in [REDACTED]'s I.E.P. or the law as to why any additional basketball practice was allegedly needed in order to provide [REDACTED] with a free, appropriate, public education. [REDACTED] also failed to introduce a copy of [REDACTED]'s I.E.P. into the record. [REDACTED] did, however, admit that [REDACTED]'s I.E.P. did not contain any specific indication of a need for goals or services related to basketball. [REDACTED] further admitted and this Court finds that [REDACTED] had actual knowledge of the times and dates of at least some of the summer basketball practices that were made available to [REDACTED] by the School District, and that she had never brought [REDACTED] to any basketball practices during the summer even though she knew where those basketball practices were occurring. The only relief requested by Plaintiff in the above-styled Complaint was additional science and math tutoring for [REDACTED] and additional basketball practice for [REDACTED]

CONCLUSIONS OF LAW

Under the Board of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley, 458 U.S. 176 (1982), as well as Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309 (2003), the law provides that public school districts have the obligation to provide a free, appropriate, public education to special education students, and that an education is appropriate if it provides a basic floor of opportunity to the special education student that permits the student to benefit educationally from the instruction. Furthermore, a student's advancing from grade to grade is strong evidence that the student has in fact received a free, appropriate, public education.

Under Ga. Comp. R. & Regs. r. 160-4-7-.12, the Plaintiff bears the burden of persuasion with respect to due process complaints. Ga. Comp. R. & Regs. r. 616-1-2-.35 provides that once the Plaintiff has completed his presentation of his evidence, the other party may move for dismissal on the ground that the Plaintiff has failed to carry its burden so as to demonstrate its right to some or all of the determinations sought by that party.

Based upon the evidence presented by the Plaintiff in this hearing, this Court finds and rules that [REDACTED] is making educational progress, [REDACTED] is advancing from grade to grade, and the Defendant is in fact providing a free, appropriate, public education to [REDACTED]. This Court further rules that the

Plaintiff in this case failed to carry the burden of persuasion as required under Ga. Comp. R. & Regs. r. 160-4-7-.12. Accordingly,

Plaintiff's request for relief is **DENIED** and Defendant's motion for involuntary dismissal is **GRANTED**.

SO ORDERED this 24th day of August, 2010.



AMANDA C. BAXTER
ADMINISTRATIVE LAW JUDGE