11-240500

3/02/2011

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], a minor, by and through his parent and next friend, [redacted], individually, Plaintiffs,	:	Docket No.: OSAH-DOE-SE-1115413-48-Gatto
v.	:	
DOUGLAS COUNTY SCHOOL DISTRICT, Defendant.	:	

MEMORANDUM OPINION AND ORDER

APPEARANCES: [redacted], *Pro se*, for Plaintiff.

Reagan G. Sauls, for Defendant.

JUDGE, Gatto, J.

I. INTRODUCTION

[redacted], a minor, by and through his parent and next friend, [redacted], filed a complaint initiating this action against the Douglas County School District under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, *et seq.* Pending before the Court are the parties' cross motions for summary judgment. For the reasons indicated below, the Court grants the District's motion for summary judgment.

II. FINDINGS OF FACT

The Douglas County School District alleged in its motion that [redacted] was withdrawn from the Douglas County School District by his mother on December 14, 2010. (Def.'s Mot. Summ. J., Ex. 4B.) However, the withdrawal form was not signed by [redacted]'s parent. (*Id.*) In the affidavits of [redacted]'s mother and [redacted]'s step father, they state under oath that [redacted] was a resident of Douglas County and a student of the District's Factory Shoals Middle School on the day that the due process complaint

was filed.[1] (Pl.'s Mot. Summ. J., D'Andre Binns Aff.; Shenita Binns Aff.) [redacted]'s mother also signed a Declaration of Intent to Utilize a Home Study Program on December 15, 2010, the same day the complaint was filed, indicating he was being home schooled in several locations, including Marietta and Chamblee, Georgia. (Def.'s Mot. Summ. J., Ex. 1D.) Therefore, the Court concludes that there is a genuine issue of fact for determination as to whether [redacted] was still attending the school at the time the complaint was filed. However, as indicated *infra*, the Court concludes that this issue is not material to the resolution of the pending cross motions for summary judgment.

III. STANDARD OF LAW

A summary judgment motion before the Court is properly granted where the moving party demonstrates that there is no genuine issue of material fact and that the undisputed facts, viewed in

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[1] D.C. requested the following relief in his complaint:

a. That the school be required to permit the parent and the parent's representative to view and copy the Petitioner's school records, including videos, no later than 7 days after the filing of this motion, and that Petitioner have no less than 5 and no more than 8 hours to view such records on at least 3 different dates of the parent's choosing; and that the school be required to certify and itemize a complete copy of the Petitioner's records as of the date of viewing by the parent;
b. That the school be required to give full and complete records including emails pertaining to the student, and any IEP voting and names, including specific and accurate notification of the items to were discussed at the meeting;
c. That the school be required to schedule any and all IEP meetings at a time and place mutually agreeable to both the parent and school;
d. That the school be required to provide advance written notice to the parent of any proposed change in placement of the student and reason for denial if proposal is brought by the student or parent;
e. That the school be required to have consent of the IEP team, including the parent, prior to any change in placement of the student;
f. That the school be required to have consent of the parent prior to any change in placement, as required by IDEA;
g. That a court-appointed monitor be present when the student's parent views the student's records, due to previous bad faith by the school in obstructing the parent's rights to view and copy those records and in altering, deleting, hiding, and making secret additions to the records without informing the parent;
h. That the school be required to permit one or more court-appointed monitors or other objective non-biased individuals which the parent selects to be present at any future IEP meetings as observers and witnesses to the IEP proceedings, in view of the school's continued bad faith in conducting IEP's which fail to conform to federal requirements;
i. That Douglas County School District be required to pay for the student private school, and all attorney's fees, costs of this action, and any costs incurred by the parent for evaluations or experts in this matter regardless of the eventual placement of the Petitioner; and Any other such relief as is just and proper.

(Am. Compl. ¶ 19.)

the light most favorable to the nonmoving party, warrant judgment as a matter of law. *See* A.R.P. Rule 15. However, when a motion for summary judgment is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing. A.R.P. Rule 15(3); *see generally Southeast Reducing Co. v. Wasserman*, 229 Ga. App. 1 (1997) (affidavit that is conclusory and unsupported by substantiating fact or circumstances is insufficient to raise a genuine issue of material fact).

The standards applicable to motions for summary judgment are announced in *Lau's Corp. v. Haskins*, 261 Ga. 491 (1991). When ruling on a motion for summary judgment, the opposing party is given the benefit of all reasonable doubt, and the court should construe the evidence and all inferences and conclusions therefrom most favorably toward the party opposing the motion. *Moore v. Goldome Credit Corp.*, 187 Ga. App. 594, 595-96 (1988). A motion for summary judgment should not be granted unless it affirmatively appears from the pleadings and evidence that the party so moving is entitled to judgment as a matter of law. *Finch v. City of Atlanta*, 232 Ga. 415, 416 (1974). *See generally Sanders v. Colwell*, 248 Ga. 376 (1981). The burden of proof is shifted when the moving party makes a prima facie showing that it is entitled to judgment as a matter of law. At that time the opposing party must come forward with rebuttal evidence or suffer judgment against him. *Trust Co. Bank v. Stubbs*, 203 Ga. App. 908 (1992).

IV. ANALYSIS

The IDEA requires public schools to provide special education and related services *only to students who reside within its jurisdiction. See* 20 U.S.C. § 1413. Similarly, under Georgia law, local school systems are required to provide special education programs for all eligible students with special needs *who are residents of their local school systems. See* O.C.G.A. § 20-2-152(b); Georgia

Board of Education Rule 160-4-7-.03. "A school system is obligated to provide educational services *only* to students who reside within that particular school system's district. The term `residency,' in the context of education, would require at least physical presence or perhaps even physical presence with intent to remain." (Emphasis added.) *Hall ex rel. Allread v. Freeman*, 700 F. Supp. 1106, 1112 (N.D. Ga. 1987).

Here, the District alleged in its motion, which was properly supported, that [redacted] no longer resides in the Douglas County School District. Therefore, the District made a prima facie showing that it is entitled to judgment as a matter of law on this issue. [redacted] had an obligation to come forward with rebuttal evidence to dispute this prima facie showing "by affidavit or other probative evidence." Although the affidavits submitted by [redacted]'s mother and [redacted]'s step father show that [redacted] was a resident of the Douglas County School District at the time he filed his complaint, [redacted] failed to offer any rebuttal evidence establishing that he is currently a resident of the Douglas County School District. Therefore, the Court concludes that there is no genuine dispute on the issue of [redacted]'s residency; [redacted] does not reside in Douglas County. Thus, the Court concludes that the Douglas County School District is not obligated to provide educational services to him.

Furthermore, "[i]n order to properly bring an action in federal court pursuant to the IDEA, a plaintiff must first exhaust the available administrative remedy of a due process hearing. This proceeding must be commenced *while* the student is attending school in the public school district to ensure that the school district is adequately notified of the alleged problem and given an opportunity to cure it. Failure to commence administrative proceedings while the student is attending school in the public school district is fatal to any subsequent IDEA-based claims." *Steven H. v. Duval County Sch. Bd.*, 2001 U.S. Dist. LEXIS 25814 (M.D. Fla., May 7, 2001) (*citing Thompson by & Through Buckhanon v. Bd. of the Special Sch. Dist. No. 1*, 144 F.3d 574 (8th Cir. 1998). Here, like in *Steven*

H. and *Thompson*, [redacted] failed to commence administrative proceedings while he was attending school in the Douglas County School District. Thus, the Court concludes that [redacted]'s failure to commence administrative proceedings while he was still attending school in the Douglas County School District is fatal to any subsequent IDEA-based claims. Therefore, the Court concludes that [redacted] may not pursue any IDEA-based claims.

Likewise, under the IDEA, federal implementing regulations, and Georgia's implementing regulations, the purpose of the mandatory resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, *so that the Local Educational Agency ("LEA") has the opportunity to resolve the dispute that is the basis for the due process complaint. See* 20 USCS § 1415(f)(1)(B)(i)(IV); 34 CFR § 300.510 (a)(2); Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(d)(4). "The inclusion of a mandatory resolution session clearly reflects Congress' intention that parents and school districts continue to work toward the resolution of disputes and the provision of appropriate educational services even after a due process request is filed." *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 71 (3d Cir. Del. 2010). *See also Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005) ("The core of the [IDEA] . . . is the cooperative process that it establishes between parents and schools."). Since [redacted] is being home schooled and is no longer attending school in the Douglas County School District, Congress' intention that parents and school districts continue to work toward the resolution of the dispute can not be fulfilled.

Finally, Georgia law provides that "[f]or the purposes of the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq., students enrolled in home study programs meeting

the requirements of Code Section 20-2-690 shall be deemed to be private school students and shall be provided with the same special education and related services as students enrolled in private schools." O.C.G.A. § 20-2-159. However, when students are enrolled in a home study program, the parents must submit a declaration that includes "the address where the home study program is located." O.C.G.A. § 20-2-159(c)(2).

As indicated *supra*, the declaration submitted by [redacted]'s parent indicated that the address of the home study program was in several locations, including unspecified addresses in Marietta and Chamblee, Georgia, neither of which is in Douglas County. This declaration does not comply with the requirements of Code Section 20-2-159(c)(2). Therefore, the Court concludes that [redacted]'s enrollment in his home study program is *not* deemed a private school placement and he therefore is not entitled to be "provided with the same special education and related services as students enrolled in private schools." Thus, he may not seek reimbursement for the costs associated with that home study program.[2] The Court therefore concludes that it affirmatively appears from the pleadings and evidence that the District is entitled to judgment as a matter of law. For the foregoing reasons, the Court grants the District's motion for summary judgment. Accordingly,

V. ORDER

IT IS HEREBY ORDERED THAT the District's motion for summary judgment is **GRANTED**, [redacted]'s motion for summary judgment is **DENIED**, and the above-styled action is **DISMISSED** with prejudice.

[2] D.C.'s complaint did not seek reimbursement since he is not in a private placement, but rather, as indicated *supra*, requested that the Douglas County School District be required to pay for private school in the future.

SO ORDERED THIS 2nd day of March, 2011.

John B. Gatto

JOHN B. GATTO, Judge