11-241765

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted],

Plaintiff,

v.

GWINNETT COUNTY SCHOOL DISTRICT,

Defendant.

Docket No.:
OSAH-DOE-SE-1119117-67-Miller

FINAL DECISION
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DETERMINATION

I. SUMMARY OF PROCEEDINGS

The Plaintiff, [redacted], is a Gwinnett County student eligible for special education services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On January 26, 2011, the Plaintiff filed a Request for Special Education Due Process Hearing ("Complaint"), contending that the Gwinnett County School District ("District"), Defendant herein, violated his rights under IDEA.

On February 23, 2011, the District filed its Motion for Summary Determination and supporting brief. The Plaintiff did not file a response.[1] In its Motion, the District contends that the Plaintiff's Complaint is barred by a previous settlement agreement between the parties and by the doctrine of *res judicata*.

After careful consideration of the arguments and pleadings, and for the reasons set forth below, the District's Motion for Summary Determination is **GRANTED**.

---

[1] On February 9, 2011, the Court entered a Scheduling Order directing that the Plaintiff's response was due on or before March 15, 2011.

II. STANDARD ON MOTION FOR SUMMARY DETERMINATION

Summary determination in this proceeding is governed by OSAH Rule 15, which provides, in relevant part:

> A 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.

Ga. Comp. R. & Regs. r. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-05 (2006) (noting that a summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary adjudication).

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is made and supported as provided in this Rule, 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.

Ga. Comp. R. & Regs. r. 616-1-2-.15(3). See Lockhart v. Dir., Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)).

By failing to respond to the District's Motion, the Plaintiff has waived his right to present evidence in opposition. However, it does not necessarily follow that the District's Motion must be granted, because "[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 prevail." Finch v. City of Atlanta, 232 Ga. 415, 416 (1974). See generally O.C.G.A. § 9-11-56(c); Sanders v. Colwell, 248 Ga. 376 (1981).

III. FINDINGS OF UNDISPUTED MATERIAL FACT

Viewing the evidence in the light most favorable to the Plaintiff, the following facts are undisputed:[2]

1.

The Plaintiff is a student eligible for special education services under IDEA. The Plaintiff resides in Gwinnett County, Georgia. (Defendant's Statement of Undisputed Material Facts ["Undisputed Facts"], ¶ 1.)

2.

The Gwinnett County School District is the local education agency responsible for providing the Plaintiff with a free appropriate public education. (Undisputed Facts, ¶ 2.)

3.

The Plaintiff filed a due process complaint against the District in June 2010 asserting claims related to his education. (Undisputed Facts, ¶ 3.)

4.

The Plaintiff's parent and the District, each with counsel, participated in a mediation on July 27, 2010, in an effort to resolve the due process complaint. (Undisputed Facts, ¶ 4.)

5.

The Plaintiff and the District were able to reach an agreement at the mediation which resolved the pending due process complaint. (Undisputed Facts, ¶ 5.)

---

[2] Because the Plaintiff did not respond to the District's Motion, the facts set forth therein, to the extent properly supported, are deemed established for purposes of this Order.

6.

A six-page Settlement Agreement and Release ("Settlement Agreement") signed by the Plaintiff's parents and counsel and the District's representative memorialized the parties' agreement. (Undisputed Facts, ¶ 6.)

7.

Under the terms of the Settlement Agreement, the District agreed, in part, to provide certain educational programming to the Plaintiff and to pay the Plaintiff's attorney's fees. (Undisputed Facts, ¶ 7.)

8.

In exchange, the Plaintiff agreed, in part, to release the District from "any and all claims" which could have been brought through the date of the Settlement Agreement, July 27, 2010, and to withdraw his due process complaint. (Undisputed Facts, ¶ 8.)

9.

The Plaintiff received extended school year ("ESY") services during the summer of 2010, from June 18, 2010 until July 13, 2010. Thus, these services had concluded by the time of the mediation and resulting Settlement Agreement. (Undisputed Facts, ¶ 9.)

10.

The Plaintiff withdrew his due process complaint on July 27, 2010, which resulted in the entry of a formal dismissal order on July 28, 2010. (Undisputed Facts, ¶ 10.)

11.

The Plaintiff filed the Complaint that is the subject of the current proceeding on January 24, 2011. The Complaint raised claims exclusively related to the ESY services provided in the summer of 2010. (Undisputed Facts, ¶ 11.)

IV. DISCUSSION

IDEA enables a parent to bring challenges to the "identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to the child" by filing a due process complaint. 20 U.S.C. § 1415(b)(7)(A), (c)(2)(A). In this case, the only issue presented by the Plaintiff's Complaint is whether the District provided appropriate ESY services during the summer of 2010. Because the Court concludes, as a matter of law, that the Plaintiff's Complaint is barred by his Settlement Agreement with the District, the District is entitled to summary determination in its favor.[3]

The Settlement Agreement is a binding contract between the Plaintiff and the District. By the express terms of the Settlement Agreement, the Plaintiff agreed to release the District from any and all claims that arose prior to July 27, 2010, the date the agreement was signed. Because the Plaintiff's present Complaint arises out of services provided prior to July 27, 2010, the Complaint is barred by the terms of the Settlement Agreement.

Under IDEA, parties are encouraged to negotiate a resolution of a due process complaint through a mandatory pre-hearing resolution meeting and optional mediation. 20 U.S.C. § 1415(e), (f). The mediation process is purely voluntary. 20 U.S.C. § 1415(e)(2)(A)(i). However, if the parties are able to resolve a due process complaint through the mediation process, IDEA requires that "the parties shall execute a legally binding agreement that sets forth such resolution and that . . . is enforceable in any State court of competent jurisdiction or in a district court of the United States." 20 U.S.C. § 1415(e)(2)(F).[4]

---

[3] The Court does not reach the District's argument that the Plaintiff's present Complaint is barred by the doctrine of *res judicata*.

[4] Public policy favors the upholding of IDEA settlement agreements. D.R. v. East Brunswick Bd. of Educ., 109 F.3d 896, 901 (3rd Cir. 1997) ("a decision that would allow parents to void settlement agreements when they become unpalatable would work a significant deterrence contrary to the federal policy of encouraging settlement agreements").

In the Plaintiff's 2010 case, the parties availed themselves of the mediation services offered under IDEA and entered into a legally binding settlement agreement that is enforceable under Georgia law. In Georgia, the four essential elements of a valid contract are "parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." O.C.G.A. § 13-3-1. The 2010 settlement agreement meets the statute's requirements and is therefore a valid and binding contract between the parties.

Regarding the first element of a contract, the parties to the 2010 Settlement Agreement were the District, the Plaintiff, and the Plaintiff's parents. (Settlement Agreement[5] at 1.) The Plaintiff's counsel and his mother signed the agreement on behalf of the Plaintiff and his parents. Paula Everett-Truppi, the District's Executive Director of Special Education and Psychological Services, signed the document for the District. (Settlement Agreement at 5.) Each signatory acknowledged that he or she had "the authority to bind [the District], [redacted], and his parents by their signatures herein." Settlement Agreement at 5, ¶ 15. Accordingly, the Settlement Agreement fulfills the first requirement of a contract under Georgia law.

Second, the parties exchanged consideration under the agreement. More specifically, the District agreed to provide certain enumerated educational services to the Plaintiff and to pay $6,000.00 in attorney's fees to the Plaintiff's counsel. In exchange, the Plaintiff and his parents agreed, *inter alia*, to withdraw the pending due process complaint and to release the District from all claims, both known and unknown, through the date of the agreement. (Settlement Agreement at 4-5, ¶ 12.) The Settlement Agreement therefore meets the second essential element of a contract.

---

[5] A copy of the Settlement Agreement was filed with the District's Motion and is attached to the Affidavit of Paula Everett-Truppi as Exhibit 1.

Third, the parties agreed to be bound by the terms of the agreement. By signing the Settlement Agreement, the parties represented that they "have agreed upon mutual terms as to the resolution of their dispute and have agreed to enter into the Release and Settlement Agreement . . . ." (Settlement Agreement at 1-2.) This clearly demonstrates the parties' mutual assent and meets the third requirement for a valid contract.

Finally, the subject matter of the Settlement Agreement encompassed the educational services provided to the Plaintiff by the District and the resolution of the issues identified in the Plaintiff's due process complaint. As previously noted, IDEA encourages parties to resolve their disputes by negotiating and executing legally binding agreements. 20 U.S.C. § 1415(e)(2)(F). Thus, the subject matter of the Settlement Agreement was proper and met the fourth condition for a binding contract.

The Plaintiff, therefore, entered into a binding contract with the District, pursuant to which he and his parents released the District from "any and all claims" that arose prior to July 27, 2010. Under the Settlement Agreement, the Plaintiff's parents specifically agreed "not to bring any claims and/or request a due process hearing . . . on account of any matter arising in connection with [[redacted]'s] education through the date of this agreement." This language is plain, unambiguous, and enforceable. See Darby v. Mathis, 212 Ga. App. 444, 445 (1994); D.L.G. v. Houston Co. Bd. of Educ., 975 F.Supp. 1317, 1321-22 (M.D. Ala. 1997). Here, it is undisputed that the Plaintiff's present Complaint is based on the ESY services he received between June 18, 2010 and July 13, 2010, prior to the date of the Settlement Agreement. His Complaint is therefore barred by the express terms of the Settlement Agreement, and the District is entitled to summary determination in its favor.

V. DECISION

For the foregoing reasons, the District's Motion for Summary Determination is hereby **GRANTED**, and judgment is entered in favor of the District as a matter of law.

SO ORDERED, this 5th day of April, 2011.

KRISTIN L. MILLER
Administrative Law Judge

Volume _____ Page _____