IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], by and through her parents, [redacted] and [redacted]; [redacted]
Plaintiffs,

v.

FULTON COUNTY SCHOOL DISTRICT,
Defendant.

Docket No.:
OSAH-DOE-SE-1109460-60-Baxter

FINAL DECISION

[redacted], by and through her parents, [redacted] and [redacted], and [redacted] and [redacted] individually, brought this action against the Fulton County School District contending that the District violated their rights under the Individuals with Disabilities Education Act ("IDEA") and Section 504 of the Rehabilitation Act of 1973. On November 19, 2010, the Fulton County School District ("District" or "Defendant") moved for summary determination arguing that no genuine issue for determination exists and that summary determination in favor of the District is appropriate. Plaintiffs filed their response on December 7, 2010. For the reasons stated below, Defendant's Motion for Summary Determination is **GRANTED**.

I. Procedural History

Following the filing of the Complaint, Plaintiffs filed a Motion for Summary Judgment on October 21, 2010. The District filed its Response on November 8, 2010. In a November 17, 2010 Memorandum Opinion and Order, this Court denied Plaintiffs' Motion for Summary Judgment, holding that Plaintiffs failed to establish a procedural violation as a matter of law. Specifically, this Court rejected Plaintiffs' argument that an IEP amendment requires the consent of all members of the IEP Team, and without such consent, a school district must file a due process request to amend an IEP. Based on a prehearing conference call, the Court understood that Plaintiffs wish to proceed on their remaining claims.

II. Findings of Undisputed Material Fact

On September 2, 2010, and October 1, 2010, IEP amendment meetings were held, at the request of

the parents, for student [redacted]. [redacted]'s parents participated in each meeting, and received copies of the March 2009 Fulton Parent Rights Document. These meetings were called to discuss reports from [redacted]'s teacher regarding her progress at the beginning of the year. The District's assessments indicated that [redacted]'s IEP was not appropriate and needed to be amended. The IEP Team proposed in both meetings to amend [redacted]'s IEP by moving her from first grade placement in interrelated resource room ("IRR") and general education to a self-contained Mildly Intellectually Disabled ("MI") classroom for math, reading, language arts, science, and social studies, with the other portions of the school day in general education for homeroom, lunch, recess, physical education, music, and art. This placement would require a change in school location because an MI classroom is not available at [redacted]'s current school location. The IEP Team proposed an immediate placement change as of October 11, 2011. [redacted]'s parents disagreed with this change and corresponded frequently with the District regarding their right to disagree with the placement change. On October 4, 2011, [redacted]'s father requested IEP documents and evaluations.[1] The District provided those documents two days later. After the filing of the Complaint, the District also provided Plaintiffs a letter entitled, "Prior Written Notice Concerning Issues Defined in Complaint/Request for Due Process Hearing." (Jean Aff. ¶¶ 3 to 12, Exs. A, B, C, D, E, H, I, J, K; Radford Aff. ¶¶ 3, 5 to 9, Exs. C, E, F; Second F.A. Aff., ¶¶ 12-19, 26, 30, 31, 33, 34, 36, 41, 42, 45, 46, 48, 49, 51, Ex. 19.)

III. Standard of Law

On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact for determination. Ga. Comp. R. & Regs. r. ("OSAH Rule") 616-1-2-.15(1). When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show by supporting affidavit or other probative evidence that there is, truly, a genuine issue of material fact that requires a trial. OSAH Rule 616-1-2-.15(3); Matsushita Elec. Indus. Col. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). Evidence which simply disputes the moving party's evidence is not sufficient; the non-moving party must demonstrate sufficient evidence in her favor such that a fact-finder would find in her favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Thus, where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for

[1] The District inexplicably did not provide the September 2, 2010 IEP document or minutes prior to the October 1, 2010

trial." First Nat. Bank of Arizona v. Cities Service Co., 391 U.S. 253, 270 (1968).

IV. Analysis

The Complaint sets forth five procedural claims against the Defendant. Those claims are (a) procedural violations and refusal to allow for agreement and consent to amend the IEP, (b) violation and denial of Notice of Procedural Safeguards, (c) maintenance of placement, (d) denial of the right of consent, and (e) denial of the right of the parent participation. For the reasons set forth below, the Defendant has established that there is no genuine issue of material fact for determination, thus warranting summary determination on all claims in the Complaint.

A. Procedural Violations & Refusal to Allow for Agreement & Consent to Amend IEP

Plaintiffs' first claim primarily asserts that an IEP amendment requires the consent of the entire IEP Team, including the parents. This Court has already addressed this issue in its November 17, 2010 Memorandum Opinion and Order, and found no such requirement and no procedural violation.[2] In this first claim, however, Plaintiffs also assert that the District "predetermined" [redacted]'s placement and failed to provide Prior Written Notice. The Court will address these two additional allegations below.

First, the undisputed material facts do not support a claim of predetermination. If an IEP is predetermined by the District, and not based on an individualized assessment of a given child, it will likely be procedurally defective. Deal v. Hamilton County Bd. Of Educ., 392 F.3d 840, 857 (6th Cir. 2005). The undisputed material facts indicate that the District held two IEP amendment meetings at the request of the parents to discuss the parents' concerns regarding [redacted]'s progress. The IEP Team reviewed [redacted]'s progress and agreed with the parents that [redacted] was not receiving an appropriate education through her current IEP. To correct the problem, the District proposed to change placement while the parents requested additional support services. The IEP reflects that both the parents and District's resolutions were discussed and evaluated, and that the IEP Team, except for the parents, decided a placement change was the appropriate amendment. The District's determination was clearly based on an individualized assessment of [redacted] that her parents fully

IEP meeting. (Second F.A. Aff., ¶ 30.)

[2] K.A. v. Fulton County Sch. Dist., No. 1109460, Memorandum Opinion and Order (Nov. 17, 2010.)

participated in. A difference in opinion regarding the resolution does not create predetermination, and thus, the undisputed material facts do not support a claim of predetermination.

Second, Plaintiffs assert that the District failed to provide Prior Written Notice ("PWN"). This assertion is not supported by the undisputed material facts. IDEA requires prior written notice when a District proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." See 34 C.F.R. § 300.503(a). IDEA regulations also provide what must be included in the written notice. 34 C.F.R. § 300.503(b). If a school district fails to provide prior written notice, the school district "must within ten days of receiving the due process hearing request, send to the parent a response" that includes the basic requirements of prior written notice. Ga. Comp. R. & Regs. r. 160-4-7-.12(3)(d). The District contends that the IEP and related documents that it provided to the parents two days after [redacted].'s father requested the documents and four days before implementation of the proposed placement change constitute prior written notice. Plaintiffs do not dispute that they received these documents, but contend that they do not constitute prior written notice. In addition, Plaintiffs received within ten days of filing their due process complaint a letter entitled, "Prior Written Notice Concerning Issues Defined in Complaint/Request for Due Process Hearing" that set forth an additional explanation of the IEP Team's proposed placement change. The IEP documents clearly set forth the requirements of 34 C.F.R. § 300.503(b), including a description of the change in placement, the reasoning for the change, and the assessments that supported the change. Thus, these documents complied with the prior written notice requirements. Even if these documents had not complied with the prior written notice requirements, the District provided such notice in its letter to the Plaintiffs following the filing of the Complaint. Based upon these undisputed material facts, the Court holds that Plaintiffs did indeed receive sufficient prior written notice of the placement change and that the District's actions do not constitute an IDEA procedural violation.

B. Violation & Denial of Notice of Procedural Safeguards

Plaintiffs contend that the Notice of Procedural Safeguards provided by the District to the parents is defective. Specifically, Plaintiffs assert that the Notice failed to inform parents of their alleged right to require consent to an IEP Amendment. As this Court ruled in its Memorandum Opinion and Order, no such right exists, and therefore, is not required to be in the notice. In their Response,

Plaintiffs also contend that the Notice is defective because it fails to inform the parents that their consent is "meaningless" and that prior written notice is allegedly not required. IDEA requires that parents are provided a Notice of Procedural Safeguards once a year or on the first due process request. 20 U.S.C. § 1415(d)(1); 34 C.F.R. § 300.504(a). IDEA very clearly specifies the contents required in this notice.[3] After a review of the March 2009 Fulton Parent Rights document, this Court concludes that there were no procedural defects. The document sufficiently covers the information required to be provided under IDEA. Accordingly, the undisputed material facts demonstrate no procedural violation associated with this document.[4]

C. Final Three Claims

The final three claims[5] set forth in the Complaint all rely on the basic legal argument that parental consent to an IEP Amendment is required. As this Court has already ruled, such a requirement does not exist under IDEA. See K.A. Memorandum Opinion and Order. Accordingly, as a matter of law, the Plaintiffs' have failed to demonstrate the alleged procedural violations set forth in the final three claims.

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[3] The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

(A) independent educational evaluation;
(B) prior written notice;
(C) parental consent;
(D) access to educational records;
(E) the opportunity to present and resolve complaints, including—
  (i) the time period in which to make a complaint;
  (ii) the opportunity for the agency to resolve the complaint; and
  (iii) the availability of mediation;
(F) the child's placement during pendency of due process proceedings;
(G) procedures for students who are subject to placement in an interim alternative educational setting;
(H) requirements for unilateral placement by parents of children in private schools at public expense;
(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;
(J) State-level appeals (if applicable in that State);
(K) civil actions, including the time period in which to file such actions; and
(L) attorneys' fees.

20 U.S.C. § 1415(d)(2).

[4] Plaintiffs claim the parents still do not understand the process even though the parents corresponded with the District numerous times with questions regarding the process and received accurate responses, had copies of their procedural rights, and are now represented by counsel. Plaintiffs may not like the scope of their rights, but to claim they do not understand them is disingenuous.

[5] The final three claims are (a) maintenance of placement, (b) denial of the right of consent, and (c) denial of the right of the parent participation.

V. Order

Based on the undisputed material facts, this Court holds there is no genuine issue of material fact for determination. Accordingly, the District's Motion for Summary Determination is **GRANTED**, and Plaintiffs' claims are **DISMISSED**.

SO ORDERED, this 12th day of December, 2010.

AMANDA C. BAXTER
Administrative Law Judge