

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

██████████ **BY AND THROUGH** ██████████  
Petitioner,

v.

**ATLANTA PUBLIC SCHOOL  
SYSTEM,**  
Respondent.

**Docket No.: 2319837  
2319837-OSAH-DOE-SE-60-Teate**

**Agency Reference No.: 2319837**



**FINAL DECISION**

**I. Introduction**

Petitioners filed a Due Process Hearing Request on February 13, 2023. Respondent (the District) filed a Motion for Summary Determination on February 28, 2023.<sup>1</sup> Petitioners filed no response to the motion. For reasons indicated, Petitioners' claims do not arise under the IDEA. Accordingly, the District's motion for summary determination is **GRANTED** and this matter is **DISMISSED** with prejudice.

**II. Undisputed Facts**

1. ██████████ was a student within the District until on or about October 14, 2022. (*See* Affidavit of ██████████ attached to the District's motion for summary determination).
2. Prior to that time, he attended one of the District's charter schools, ██████████  
██████████ (*Id.*).
3. Shortly after October 14, 2022, and prior to January 1, 2023, Petitioner and her son moved out of the City of Atlanta and relocated to the ██████████ area. (*Id.*).

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<sup>1</sup> Although this matter was filed as a motion for summary determination, it is more appropriately viewed as a motion for dismissal, inasmuch as Petitioners raised no IDEA issue. Petitioners are not adversely affected by such a characterization inasmuch as the response time for a motion for summary determination is longer (20 days) rather than 10 days allowed on a motion to dismiss. See Ga. Comp. R. & Regs. 616-1-2-.15(1)(2) and Ga. Comp. R. & Regs. 616-1-2-.16(1)(c).

4. On October 9, 2022, prior to leaving APS, Petitioner filed a complaint with the Georgia Department of Education (hereinafter “DOE”), alleging that the District had failed to timely re-evaluate the student. (*Id.* at ¶ 8).
5. After the District responded to the complaint on October 30, 2022, and following the provision of information requested by the State investigator, DOE issued a decision on December 9, 2022. (*Id.* at ¶ 9.)
6. The decision agreed with the Petitioner and found the District not in compliance with the appropriate timeline for a reevaluation. (*Id.*).
7. As a result of its findings, DOE ordered the District to complete its reevaluation of the student by January 20, 2023. (*Id.* at ¶ 10).
8. The student’s reevaluations, however, had been finalized prior to the end of November 2022. (*Id.*).
9. DOE further ordered that the District hold an IEP team meeting to, among other things, review the reevaluations. (*Id.* at ¶ 11).
10. Upon receiving DOE’s decision and its requirement that the District hold an IEP meeting upon completion of the reevaluations, the District contacted DOE and explained that the Petitioner and her son were no longer residents of the City of Atlanta and therefore the District could not conduct an IEP meeting. (*Id.* at ¶ 12).
11. DOE instructed the District to work with the student’s new school district to provide the District’s reevaluations and to assist the new school district to conduct the required IEP meeting. (*Id.*).
12. Consistent with DOE’s instructions, the District reached out to the student’s new school district and shared relevant information so the new school district could conduct the IEP team

meeting with the student's re-evaluations. (*Id.* at ¶ 13.).

13. No information was shared with the new school district until January of 2023, after Petitioner and her son had relocated to the [REDACTED] area. (*Id.* at ¶ 14).

14. Petitioner's due process hearing request solely focuses on her allegations that the District should not have shared any information with the new school district and that she was required to be informed and give consent prior to the District providing such information to the new school district. (*See* February 13, 2023 DPHR, generally).

### **III. Conclusions of Law**

1. A party may move, based on supporting affidavits or other probative evidence, for summary determination in its favor on any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. Ga. Comp. R. & Regs. 616-1-2-.15(1). The moving party must show it "is entitled to a judgment as a matter of law on the facts established." *Porter, et al v. Felker, et al*, 261 Ga. 421, 405 S.E.2d 31 (1991)); *Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res.*, 282 Ga. App. 302, 304-305, 638 S.E.2d 447, 449 (2006) (observing that summary determination is "similar to a summary judgment" and elaborating that an ALJ "is not required to hold a hearing" on issues properly resolved by summary adjudication).<sup>2</sup>

2. This Court's jurisdiction is limited to complaints arising under the IDEA. Under the IDEA and DOE regulations, the matters that may be raised in a due process complaint relate to the "identification, evaluation, or educational placement of a child with a disability or the provision of [a free appropriate public education] to the child." 34 C.F.R. §§ 300.507, 300.503(a)(1)-(2);

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<sup>2</sup> Once a motion for summary determination is made and supported, the opposing party may not rest upon mere allegations or denials, but must show by supporting affidavit or other probative evidence that there is a genuine issue of material fact. Ga. Comp. R. & Reg. 616-2-2-.15(2); *see Guy Lockhart v. Dir., Env'tl. Prot. Div., Dep't of Natural Res.*, OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at \*3 (2007) (citing *Leonaitis v. State Farm Mutual Auto Ins. Co.*, 186 Ga. App. 854, 368 S.E.2d 775 (1988)).

Ga. Comp. R. & Regs. 160-4-7-.12(3) (“The impartial due process hearing is designed to provide a parent or [local educational agency] an avenue for resolving differences with regard to the identification, evaluation, placement or provision of a [free appropriate public education] to a child with a disability.”). Moreover, the IDEA provides that the decision following an IDEA due process hearing “shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.” 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513; Ga. Comp. R. & Regs. 160-4-7-.12(3)(p). The Court does not have jurisdiction over causes of action that arise under other federal laws. *Atlanta Independent School System v. S.F.*, 2010 U.S. Dist. LEXIS 141552, \*21–22 n.4 (N.D. Ga. Feb. 22, 2010) (“There is nothing in the Georgia Administrative Code section applicable to IDEA dispute resolution that suggests that the impartial due process hearing is an appropriate venue for raising non-IDEA claims”) (citation omitted).

3. FERPA is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. See 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.1 et seq. The Supreme Court has held that there is no private right of action in FERPA. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002). The relevant provisions “contain no rights creating language, they have an aggregate, not individual focus, and they serve primarily to direct the Secretary of Education’s distribution of public funds to education institutions.” *Id.* at 290. Even if there were an avenue for Petitioner to bring such a claim, this tribunal would not be the venue to hear a FERPA claim. As Respondent notes, Petitioner’s due process hearing request solely focuses on her allegations that the District should not have shared any information with the new school district and that she was required to be informed and give consent prior to the District providing such information to the new school

district.<sup>3</sup> Those alleged violations of federal law are claims that the District violated the confidentiality provisions provided under FERPA and its implementing regulations.

#### IV. Decision

Having read and considered the District's Motion for Summary Determination and viewing Petitioners' complaint, Petitioners' claims arise under FERPA, rather than under IDEA. There are no remaining genuine issues of material fact for determination. See Ga. Comp. R. & Regs. 616-1-2-.15(1).

**SO ORDERED**, this 24th day of March 2023.

  
  
**Steven W. Teate**  
**Administrative Law Judge**

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<sup>3</sup> *See generally* February 13, 2023 DPHR.